



STIC Search Report

EIC 3700

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TO: Sebastian Passaniti
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Art Unit: 3711
Thursday, April 29, 2004

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From: Terry Solomon
Location: EIC 3700
CP2-2C08
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Search Notes

Litigation found:

Vardon Golf Company, Inc. v. Goldsmith International, Inc. 98cv2944
Vardon Golf Company, Inc. v. Karsten Manufacturing Corporation 99cv2785
Vardon Golf Company, Inc. v. Rossignol Ski Company, Inc. 99cv2784
Vardon Golf Company, Inc. v. Biam/General Titanium, Inc. 01cv5909

Docket status:

98cv2944 is still open.
99cv2785 is closed.
99cv2784 is closed.
01cv5909 is closed.

Sources: Lexis/Nexis, Questel-Orbit and Court Link

294 F.3d 1330, *, 2002 U.S. App. LEXIS 12353, **;
63 U.S.P.Q.2D (BNA) 1468

Time of Request: April 29, 2004 09:20 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5301941 or 5,301,941

**VARDON GOLF COMPANY, INC., Plaintiff-Appellant, v. KARSTEN
MANUFACTURING CORPORATION, Defendant-Cross Appellant.**

01-1557, 01-1651

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

294 F.3d 1330; 2002 U.S. App. LEXIS 12353; 63 U.S.P.Q.2D (BNA) 1468

June 21, 2002, Decided

PRIOR HISTORY: [**1] Appealed from: United States District Court for the Northern District of Illinois. Judge Charles P. Kocoras.

DISPOSITION: Affirmed in part, reversed in part, and remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff patentee appealed the order of the United States District Court for the Northern District of Illinois denying its motion to amend its patent infringement complaint against defendant manufacturer, and dismissing the patentee's suit in its entirety. The manufacturer cross-appealed, arguing that the court abused its discretion when it declined to sanction the patentee for bad faith litigation.

OVERVIEW: In a prior suit for infringement of the patentee's golf club patents, the district court granted partial summary judgment that there was no infringement under one of the patents, but denied summary judgment on the (still pending) claims under the other patent. Prior to the instant suit, the patentee obtained a reissue patent, under which the instant suit was brought. In doing so, it surrendered the parent patent, thereby mooting the prior's suit's summary judgment and extinguishing the patentee's right to appeal the summary judgment on the prior patent. In the instant suit, the patentee moved to amend its answer to allege infringement of additional patent claims. The manufacturer argued, and the district court held, that the patentee was collaterally estopped from bringing the amended complaint's claims. The court of

appeals disagreed, holding that the grant of partial summary judgment in the prior suit was not final for purposes of collateral estoppel and that the district court in the instant case therefore erred when it accorded the decision preclusive effect. The grant of summary judgment clearly was not immune to reversal or amendment. Refusal to sanction the patentee was proper.

OUTCOME: The court of appeals reversed the district court's dismissal of both the patentee's complaint and its motion to amend, affirmed the district court's refusal to impose sanctions on the patentee, and remanded for further proceedings.

LexisNexis (TM) HEADNOTES - Core Concepts:

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN1] Because the application of collateral estoppel is not a matter within the exclusive jurisdiction of the United States Court of Appeals for the Federal Circuit, the court applies the law of the circuit in which the district court sits.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN2] Collateral estoppel, or issue preclusion, prevents a party from litigating an issue if: (1) the issue sought to be precluded is the same as that involved in an earlier action; (2) the issue was actually litigated; (3) determination of the issue was essential to a final judgment; and (4) the party against whom estoppel is invoked was represented in the prior action.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN3] In order to be final for purposes of collateral estoppel, the decision need only be immune, as a practical matter, to reversal or amendment. The possibility of appeal contributes directly to this determination of finality, which turns upon such factors as the nature of the decision (that is, that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review. The fact that the decision was subject to appeal or was in fact reviewed on appeal is a factor supporting the conclusion that the decision is final for the purpose of preclusion.

Civil Procedure > Appeals > Appellate Jurisdiction > Interlocutory Orders

[HN4] Where neither party moves to certify a court's interlocutory decision as final under Fed. R. Civ. P. 54(b), consequently that decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN5] The existence of speculative methods of preserving the right to appeal does not render a nonfinal judgment preclusive for the purposes of collateral estoppel.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel
Civil Procedure > Appeals > Appellate Jurisdiction > Interlocutory Orders

[HN6] The possibility of interlocutory appeal does not render a decision final under the doctrine of collateral estoppel, because the law of collateral estoppel is not intended to penalize a party for declining to try to take a piecemeal appeal.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel
Civil Procedure > Appeals > Standards of Review > Standards Generally

[HN7] The role of a court of appeals is limited to reviewing the district court's application of collateral estoppel, not the correctness of the underlying decision.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

[HN8] An abuse of discretion occurs if the decision is clearly unreasonable or is based on erroneous conclusions of law.

COUNSEL: Michael P. Mazza, Niro, Scacone, Haller & Niro, of Chicago, Illinois, argued for plaintiff-appellant. With him on the brief was Keith A. Vogt.

Lawrence G. Kurland, Bryan Cave LLP, of New York, New York, argued for defendant-cross appellant. With him on the brief were Thomas C. Walsh, David A. Roodman, Roxana Wizorek, and K. Lee Marshall, of Bryan Cave LLP, of St. Louis, Missouri; and Troy B. Froderman, Bryan Cave LLP, of Phoenix, Arizona.

JUDGES: Before NEWMAN, DYK, and PROST, Circuit Judges. Opinion for the court filed by Circuit Judge PROST. Concurring opinion filed by Circuit Judge DYK.

OPINIONBY: PROST

OPINION: [*1331] PROST, Circuit Judge.

Vardon Golf Company, Inc. ("Vardon") appeals from the final decision of the United States District Court for the Northern District of Illinois, denying Vardon's motion to amend its complaint against Karsten Manufacturing Corporation ("Karsten") and dismissing Vardon's suit in its entirety. *Vardon Golf Co. v. Karsten Mfg. Corp.*, 2001 U.S. Dist. LEXIS 24236, No. 00 C 7221, slip op. at 1 (N.D. Ill. May 9, 2001). The [**2] court held that a grant of partial summary judgment that Karsten did not infringe claims 12 and 15 of Vardon's U.S. Patent No. 5,301,941 ("the '941 patent") in a prior case, *Vardon Golf Co., Inc. v. Karsten Mfg. Corp.*, 2000 U.S. Dist. LEXIS 13769, No. 99 C 2785, slip op. at 1 (N.D. Ill. Sept. 7, 2000) ("Vardon I"), collaterally estopped Vardon from bringing a new action against Karsten based on certain claims of Vardon's reissue patent, U.S. Patent No. Re. 36,950 ("the '950 patent"). *Vardon Golf Co. v. Karsten Mfg. Corp.*, 2001 U.S. Dist. LEXIS 24236, No. 00 C 7221, slip op. at 5 (N.D. Ill. May 9, 2001) ("Vardon II"). Karsten cross-appeals, arguing that the court abused its discretion when it declined to sanction Vardon for bad faith litigation. *Vardon Golf Co., Inc. v. Karsten Mfg. Corp.*, 2001 U.S. Dist. LEXIS 23318, No. 00 C 7221, slip op. at 5 (N.D. Ill. Sept. 20, 2001) ("Vardon II Sanctions"). We hold that the grant of partial summary judgment in Vardon I was not final for purposes of collateral estoppel and that the court therefore erred in according it preclusive effect in Vardon II. We reverse the court's dismissal of both Vardon's complaint and its motion to amend, and remand for further proceedings consistent with this opinion. [**3] We affirm the court's refusal to impose sanctions.

[*1332] BACKGROUND

Vardon and Karsten manufacture golf clubs. Vardon I, 2000 U.S. Dist. LEXIS 13769, [slip op.] at 1. In 1999, Vardon brought suit against Karsten alleging that Karsten's TiSI woods infringed claims 12 and 15 of Vardon's '941 patent and that Karsten's ISI iron-type

clubs infringed several claims of Vardon's U.S. Patent No. 5,401,021 ("the '021 patent"). 2000 U.S. Dist. LEXIS 13769, [slip op.] Id. at 1. Claims 12 and 15 of the '941 patent both contain the limitation "substantially uniform thickness." 2000 U.S. Dist. LEXIS 13769, [slip op.] Id. at 15-16. On September 7, 2000, the district court construed this limitation and held that as a matter of law, Karsten's clubs did not infringe claims 12 and 15 either literally or under the doctrine of equivalents. 2000 U.S. Dist. LEXIS 13769, [slip op.] Id. at 17-19. The court consequently granted summary judgment in Karsten's favor on the '941 patent. Id. It denied, however, Karsten's motion for summary judgment on certain of the '021 claims. Id. Thus, Vardon I is still before the court awaiting trial on the '021 patent. That case is not before us on appeal.

Prior to bringing suit against Karsten, Vardon had filed a reissue application for the '941 patent. While that application was pending, but before the court's [**4] decision in Vardon I, Vardon filed a motion to substitute the reissue patent for the '941 patent in the ongoing litigation. The court denied the motion. Two months after the court granted partial summary judgment in Karsten's favor, the '950 reissue patent issued. In order to obtain the reissue, Vardon surrendered the parent patent, thereby mooting Vardon I's summary judgment on the '941 claims and extinguishing Vardon's right to appeal the court's claim construction and finding of noninfringement regarding that patent. Vardon subsequently filed a second action against Karsten on November 15, 2000. Vardon II at 2. Like Vardon I, Vardon II was brought in the Northern District of Illinois, although the two suits were heard by different district judges.

In Vardon II, Vardon alleged that Karsten infringed claim 22 of the '950 reissue patent. Id. Unlike claims 12 and 15 of the '941 patent, claim 22 of the '950 reissue did not contain the "substantially uniform thickness" limitation that the court had previously construed in Vardon I. Id. After Karsten answered, however, Vardon sought to amend its complaint to include allegations that Karsten's product [**5] infringed claims 12 through 21 of the '950 patent, all of which contain the "substantially uniform thickness" limitation. Id. at 2-3. Karsten challenged this motion, arguing that Vardon was collaterally estopped from raising claims that included a limitation that Karsten's clubs had already been found not to possess. Id. at 3.

The court agreed with Karsten and denied Vardon's motion. Id. at 5. The court held that Vardon had failed to take advantage of available means of preserving its right to appeal in connection with the Vardon I litigation, and that Vardon was therefore estopped from rearguing the Vardon I issues. Id. When Vardon later informed the

court that the Patent and Trademark Office ("PTO") had made a mistake printing claim 22 and that, like claims 12 through 21, it too should have contained the "substantially uniform thickness" language, the court dismissed Vardon's entire complaint on the basis of collateral estoppel. Id. at 1. The court denied Karsten's motion for sanctions, however, concluding that Karsten had failed to introduce sufficient evidence to support a finding of bad faith litigation on Vardon's part. Vardon II Sanctions at [**6] 5.

Vardon subsequently filed another motion with the Vardon I court to substitute the '950 patent into its grant of partial summary judgment. This motion was denied. Vardon appealed the Vardon II decision [*1333] to this court, and we have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1).

DISCUSSION

[HN1] "Because the application of collateral estoppel is not a matter within the exclusive jurisdiction of this court, this court applies the law of the circuit in which the district court sits." *Bayer AG v. Biovail Corp.*, 279 F.3d 1340, 1345, 61 U.S.P.Q.2D (BNA) 1675, 1679 (Fed. Cir. 2002) (citing *Pharmacia & Upjohn Co. v. Mylan Pharms., Inc.*, 170 F.3d 1373, 1381 n.4, 50 U.S.P.Q.2D (BNA) 1033, 1040 n.4 (Fed. Cir. 1999)). Under Seventh Circuit law, [HN2] collateral estoppel, or issue preclusion, prevents a party from litigating an issue if: (1) the issue sought to be precluded is the same as that involved in an earlier action; (2) the issue was actually litigated; (3) determination of the issue was essential to a final judgment; and (4) the party against whom estoppel is invoked was represented in the prior action. See *Adair v. Sherman*, 230 F.3d 890, 893 (7th Cir. 2000); [**7] *Chicago Truck Drivers, Helpers & Warehouse Union (Indep.) Pension Fund v. Century Motor Freight, Inc.*, 125 F.3d 526, 530 (7th Cir. 1997); *Havoco of Am., Ltd. v. Freeman, Atkins & Coleman, Ltd.*, 58 F.3d 303, 307 (7th Cir. 1995).

A.

On appeal, Vardon argues that the Vardon II court erred when it accorded Vardon I preclusive effect because that decision was neither final nor appealable. According to Vardon, a nonfinal, unappealable judgment does not become preclusive simply because a party theoretically could have preserved its right to appeal by pursuing certain procedural avenues. In response, Karsten concedes that Vardon I's grant of partial summary judgment was not sufficiently final to be appealed. It argues, however, that the decision should be accorded preclusive effect because Vardon voluntarily relinquished its right to appeal. In short, Karsten asserts that because Vardon did not take procedural steps to preserve its appeal from Vardon I's partial summary

judgment, that judgment now precludes Vardon from litigating the matter anew. In making this argument, Karsten relies heavily on the Seventh Circuit's statement in *Williams v. Commissioner of Internal Revenue*, 1 F.3d 502, 504 (7th Cir. 1993) [**8] that application of collateral estoppel "might be extended to certain cases of summary judgment and even of partial summary judgment." n1

n1 Karsten also argues that the issue of finality is not properly before the court because Vardon failed to raise it in its opening brief. This statement is not accurate. In its brief, Vardon asserts that Vardon I lacks preclusive effect because it is not final, and Karsten's argument is consequently without merit.

We agree with Vardon that Vardon I's grant of partial summary judgment was not final for purposes of collateral estoppel and that the Vardon II court therefore erred when it accorded the decision preclusive effect. In *Miller Brewing Co. v. Jos. Schlitz Brewing Co.*, 605 F.2d 990 (7th Cir. 1979), the Seventh Circuit set forth the requirements for finality under the doctrine of collateral estoppel. The court held that [HN3] in order "to be 'final' for purposes of collateral estoppel the decision need only be immune, as a practical matter, to reversal [**9] or amendment." *Id.* at 996. According to the court, the possibility of appeal contributes directly to this determination of finality, which "turns upon such factors as the nature of the decision (i.e., that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review." *Id.* (emphasis added) (citing *Lummus Co. v. Commonwealth Oil Refining Co.*, 297 F.2d 80, 89 [1334] (2d Cir. 1961)). In so holding, the Seventh Circuit explicitly adopted the approach followed by the Restatement (Second) of Judgments, § 41 reporter's note comment g (Tent. Draft No. 1, 1973), now § 13 reporter's note comment g (1982), which states that the fact "that the decision was subject to appeal or was in fact reviewed on appeal [is a] factor supporting the conclusion that the decision is final for the purpose of preclusion." *Id.* See also *United States v. Sherman*, 912 F.2d 907, 909-10 (7th Cir. 1990); *Gilldom Sav. Asso. v. Commerce Sav. Asso.*, 804 F.2d 390, 393 (7th Cir. 1997); accord *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1135, 227 U.S.P.Q. (BNA) 543, 545 (Fed. Cir. 1985) ("Sufficient firmness, [**10] according to the Restatement, requires that the party against whom the estoppel is asserted have had the right, even if not exercised, to challenge on appeal the correctness of the earlier decision.").

In the instant case, Vardon I's grant of summary judgment clearly was not "immune . . . to reversal or amendment." [HN4] Neither party moved to certify the court's interlocutory decision as final under Rule 54(b), and consequently that decision was "subject to revision at any time before the entry of judgment adjudicating all the claims," namely resolution of the remaining '021 patent allegations. Fed. R. Civ. Pro. 54(b). Moreover, Vardon never had the opportunity to appeal Vardon I's construction of the "substantially uniform thickness" limitation or its finding that Karsten's product did not contain this element of the '941 patent either literally or under the doctrine of equivalents. Indeed, Karsten concedes that Vardon I's partial summary judgment was not an appealable final judgment under 28 U.S.C. § 1291, and it is undisputed that this decision was rendered moot, and therefore unappealable, when Vardon surrendered the '941 patent. Under these circumstances, [**11] Vardon I cannot be said to be "final" for collateral estoppel purposes as that term is defined either by the Seventh Circuit or the Restatement.

Karsten urges this court to find otherwise, however, on the ground that Vardon could theoretically have preserved its right to appeal by availing itself of certain procedural means. According to Karsten, Vardon I should be deemed final and therefore preclusive because Vardon could have avoided mootness by the court's grant of partial summary judgment by: (1) moving the Vardon I court to certify its decision for interlocutory appeal under Rule 54(b), (2) substituting the '950 reissue patent for the '941 patent at an appropriate time, or (3) suspending its reissuance proceedings before the PTO. This argument is without merit. As a preliminary matter, it is not at all certain that the Vardon I court would have granted a Rule 54(b) certification motion. Nor is it clear that the court would have allowed Vardon to substitute the '950 reissue patent into the litigation, particularly in light of its denial of Vardon's motions to substitute. [HN5] The existence of such speculative methods of preserving the right to appeal does not render a [**12] nonfinal judgment preclusive for the purposes of collateral estoppel. Accord *Interconnect Planning Corp.*, 774 F.2d at 1136, 227 U.S.P.Q. (BNA) at 545 (Fed. Cir. 1985) [HN6] (the possibility of interlocutory appeal does not render a decision final under the doctrine of collateral estoppel because "the law of collateral estoppel is not intended to penalize a party for declining to try to take a piecemeal appeal.").

Finally, we find Karsten's reliance on *Williams* unconvincing. Although the *Williams* court observed that "a judgment final in the trial court may have collateral estoppel effect even though the loser has not exhausted his appellate remedies," and noted that "it has been suggested that this rule might be extended to certain

cases of [*1335] summary judgment and even of partial summary judgment," the court held that the appellant's collateral estoppel argument was "frivolous." 1 F.3d at 504. As such, its statements about the possible scope of collateral estoppel are dicta. At oral argument, Karsten's counsel could not definitively direct the court to any case that has given collateral estoppel effect to a nonfinal judgment. We decline to do so today.

B.

Vardon [**13] also argues that Vardon I's construction of the claim limitation "substantially uniform thickness" is patently incorrect and urges this court to construe the term *de novo*. Karsten responds that Vardon I is not before this court and that reconstructing the limitation would therefore be improper. We agree with Karsten. As this court stated in *Pharmacia*, 170 F.3d at 1380, 50 U.S.P.Q.2D (BNA) at 1039, [HN7] "our role is limited to reviewing the district court's application of collateral estoppel, not the correctness of the [underlying decision]." It is Vardon II that is on appeal to this court, not Vardon I, and we therefore do not address the Vardon I court's claim construction.

Finally, on cross-appeal Karsten argues that the Vardon II court abused its discretion when it declined to sanction Vardon for bad faith litigation. Karsten sought such sanctions in the form of attorneys fees under Federal Rule of Civil Procedure 54(d)(2)(E), and the court refused to grant them on the ground that the record did not support a finding of bad faith. Vardon II Sanctions at 5. Because it was neither unreasonable nor clearly erroneous for the district court to deny [**14] Karsten's motion for sanctions, Karsten's argument lacks merit. See *Abrutyn v. Giovanniello*, 15 F.3d 1048, 1050-51, 29 U.S.P.Q.2D (BNA) 1615, 1617 (Fed. Cir. 1994) (holding that [HN8] an abuse of discretion occurs if the decision is clearly unreasonable or is based on erroneous conclusions of law). We therefore affirm.

CONCLUSION

The Vardon II court erred when it concluded that Vardon I's grant of partial summary judgment was final for the purposes of collateral estoppel and accorded that interlocutory decision preclusive effect. This court, therefore, reverses Vardon II's dismissal of Vardon's complaint and its motion to amend and remands for further proceedings consistent with this Opinion. We decline to reach the claim construction issue and affirm the Vardon II court's dismissal of Karsten's motion for sanctions.

COSTS

Each party shall bear its own costs.

AFFIRMED-IN-PART, REVERSED-IN-PART,
AND REMANDED.

CONCURBY: DYK

CONCUR: DYK, Circuit Judge, concurring.

I join the majority's opinion because I agree that we are bound by our decision in *Bayer AG v. Biovail Corp.*, 279 F.3d 1340, 61 U.S.P.Q.2D (BNA) 1675 (Fed. Cir. 2002), to apply regional circuit [**15] law to res judicata and collateral estoppel issues. n2 I have serious [*1336] doubts, however, as to whether that is the correct result.

n2 Footnote 4 of the decision in *Pharmacia & Upjohn Co. v. Mylan Pharmaceuticals, Inc.*, 170 F.3d 1373, 50 U.S.P.Q.2D (BNA) 1033 (Fed. Cir. 1999), on which Bayer relied, suggested that we should apply regional circuit law on some collateral estoppel issues and not on others. See *id.* at 1381 n.4 ("*Application of Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 28 L. Ed. 2d 788, 91 S. Ct. 1434 (1971)"), being an issue of patent law, is a matter within our exclusive jurisdiction and is hence subject to this court's law. However, because the application of general collateral estoppel principles, such as finality of judgment, is not a matter within the exclusive jurisdiction of this court, we must apply the law of the circuit in which the district court here sits . . .").

Although we apply regional circuit [**16] law to purely procedural issues, we apply Federal Circuit law to non-patent issues where "the disposition of nonpatent-law issues is affected by the special circumstances of the patent law setting in which those issues arise." *Midwest Indus., Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356, 1360, 50 U.S.P.Q.2D (BNA) 1672, 1675 (Fed. Cir. 1999) (en banc). Such a relationship has been found to exist in a number of areas. For example on personal jurisdiction questions, we have applied our own law, see *Hildebrand v. Steck Mfg. Co.*, 279 F.3d 1351, 1354, 61 U.S.P.Q.2D (BNA) 1696, 1698 (Fed. Cir. 2002). We do so in order to "promote uniformity in the field of patent law" *Midwest Indus.*, 175 F.3d at 1360, 50 U.S.P.Q.2D (BNA) at 1676. Although the recent decision of the Supreme Court in *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 2002 U.S. LEXIS 4022, 122 S. Ct. 1889, 153 L. Ed. 2d 13 (2002) may make that uniformity more elusive, it is still important.

Res judicata and collateral estoppel questions are affected by and closely related to patent law questions. Moreover, they may be outcome determinative. In this particular case, it is unlikely that [**17] there is a variation in the collateral estoppel rules in the various regional circuits. But it is not difficult to imagine other cases in which different res judicata and collateral estoppel rules would be applied depending on the regional circuit forum, and that the existence of these different rules could affect forum selection. Patent

litigants often have a wide choice of fora. There is simply no reason why an earlier patent judgment should have one consequence in the Third Circuit and another in the Seventh Circuit, for example. Such an approach encourages the very forum shopping that our regional circuit law approach was designed to prevent. See *Midwest Indus.*, 175 F.3d at 1359, 50 U.S.P.Q.2D (BNA) at 1675.

I would apply uniform Federal Circuit law to determine the effect of previous patent litigation.

2001 U.S. Dist. LEXIS 23318, *

Time of Request: April 29, 2004 09:21 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5301941 or 5,301,941

2 of 4 DOCUMENTS

**VARDON GOLF COMPANY INC., Plaintiff, vs. KARSTEN MANUFACTURING
CORPORATION, Defendant.**

00 C 7221

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2001 U.S. Dist. LEXIS 23318

September 20, 2001, Decided

DISPOSITION: [*1] Defendant's request to recover costs granted and motion for attorney's fees denied. All other pending motions moot.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant manufacturing company was granted summary judgment on plaintiff golf company's patent infringement claim. The golf company filed another complaint alleging that the manufacturing company infringed claims of the same patent. The court denied her claim on the ground of issue preclusion. The manufacturing company moved to recover taxable costs and attorney's fees from the golf company.

OVERVIEW: The manufacturing company sought to recover costs for deposition transcripts, copies of patents and patent prosecution file histories, and general photocopying. The examination of the owner of the patent-in-suit was necessary to the manufacturing company's intervening rights defense, which the manufacturing company reasonably raised and which the golf company did not challenge when the manufacturing company asked for discovery on it. The cost of the deposition was therefore recoverable. The other deposition-related costs that the manufacturing company requested were also recoverable. Likewise, costs associated with copies of the patent file and general photocopies were taxable. Despite the golf company's

objections, those documents were necessary for use in the case the manufacturing company initiated against the golf company. The court did not hold that the golf company acted in bad faith, and therefore it could not grant attorney's fees.

OUTCOME: The manufacturing company's request to recover costs was granted and the motion for attorney's fees was denied. All other pending motions were moot.

LexisNexis (TM) HEADNOTES - Core Concepts:***Civil Procedure > Costs & Attorney Fees > Attorney Fees***

[HN1] Fed. R. Civ. P. 54 provides that costs shall be allowed as of course to the prevailing party unless the court otherwise directs. Fed. R. Civ. P. 54(d)(1). Those recoverable costs include: (1) fees of the clerk; (2) fees for transcripts; (3) fees for printing and witnesses; (4) fees for copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court-appointed experts and interpreters. 28 U.S.C.S. § 1920. Fed. R. Civ. P. 54 creates a presumption in favor of the award of costs. The presumption is difficult to overcome, and the court's discretion is narrowly confined -- the court must award costs unless it states good reasons for denying them.

Civil Procedure > Costs & Attorney Fees > Litigation Costs

[HN2] Video depositions are allowable costs so long as they are necessary to the litigation.

Civil Procedure > Costs & Attorney Fees > Litigation Costs

[HN3] In determining whether to award costs to a party as the prevailing party, the court's concern is not what issue ultimately decided the case. Rather, the statute compels the court to decide whether certain costs were necessary to the litigation and were, therefore, recoverable.

COUNSEL: For VARDON GOLF COMPANY INC, plaintiff: Michael P. Mazza, Keith A. Vogt, Gregory T. Casimer, Niro, Scavone, Haller & Niro, Ltd., Chicago, IL.

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For KARSTEN MANUFACTURING CORPORATION, defendant: Walter Jones, Jr., Carole A. Corns, Nicole Feder, Pugh, Jones & Johnson, P.C., Chicago, IL.

For KARSTEN MANUFACTURING CORPORATION, defendant: Lawrence G. Kurland, Bryan Cave LLP, New York, NY.

For KARSTEN MANUFACTURING CORPORATION, defendant: Troy B Froderman, George C Chen, Bryan Cave LLP, Phoenix, AZ.

For KARSTEN MANUFACTURING CORPORATION, counter-claimant: David A. Roodman, Roxana Wizorek, Bryan Cave, LLP, St. Louis, MO.

For KARSTEN MANUFACTURING CORPORATION, counter-claimant: Carole A. Corns, Pugh, Jones & Johnson, P.C., Chicago, IL.

For KARSTEN MANUFACTURING CORPORATION, counter-claimant: George C Chen, Bryan Cave LLP, Phoenix, AZ.

For VARDON GOLF COMPANY INC, counter-defendant: Michael [*2] P. Mazza, Keith A. Vogt, Gregory T. Casimer, Niro, Scavone, Haller & Niro, Ltd., Chicago, IL.

JUDGES: Charles P. Kocoras, United States District Judge.

OPINIONBY: Charles P. Kocoras

OPINION:

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

Before the Court are Karsten Manufacturing Company's motions to recover costs and attorney's fees. For the following reasons, we grant the motion to recover costs and deny the motion for attorney's fees.

BACKGROUND

The instant matter is but one in a series of litigations between Plaintiff Vardon Golf Company ("Vardon") and Defendant Karsten Manufacturing Corporation ("Karsten"). In September 2000, our sister court granted Karsten summary judgment of noninfringement of U.S. Patent No. 5,301,941 ("the '941 patent") because the face wall of Karsten's accused golf clubs did not have a "substantially uniform thickness," a limitation required by all of the claims asserted in that case. Soon thereafter, Vardon obtained a reissued patent ("the '950 patent"), but by doing so Vardon extinguished the opportunity to appeal our sister court's opinion.

Vardon turned to this forum for relief, filing in November 2000 a complaint alleging that Karsten [*3] infringed claim 22 of the '950 patent. Claim 22, according to the complaint, did not contain the "substantially uniform thickness" language our sister court had already construed. Several months later, after the parties had completed discovery on Karsten's intervening rights defense, Vardon moved to amend its pleadings to include assertions of claims 12-21 of the '950 patent. All of those claims contained the "substantially uniform thickness" language. Karsten opposed the amendment on the ground of issue preclusion, and this Court agreed. When we delivered that ruling in open Court, Vardon's counsel apprised the Court that claim 22 should have contained the "substantially uniform thickness" language but did not due to a printing error by the Patent Office. Because claim 22 should have included the language, it fell within the ambit of our ruling and Vardon was estopped from relitigating it in our forum. Vardon later sought an order deeming this ruling final, which we provided.

Karsten now seeks to recover taxable costs from Vardon. It also desires an award of attorney fees. For the following reasons we grant the first request but deny the second.

DISCUSSION

*1. Taxable Costs [*4]*

[HN1] Rule 54 of the Federal Rules of Civil Procedure provides that costs "shall be allowed as of

course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). Those recoverable costs include: (1) fees of the clerk, (2) fees for transcripts, (3) fees for printing and witnesses, (4) fees for copies of papers necessarily obtained for use in the case, (5) docket fees, and (6) compensation of court-appointed experts and interpreters. See 28 U.S.C. § 1920. As the Seventh Circuit has observed, Rule 54 creates a presumption in favor of the award of costs. See *M.T. Bonk Co. v. Milton Bradley Co.*, 945 F.2d 1404, 1409 (7th Cir. 1991). The presumption is "difficult to overcome," and our discretion is "narrowly confined -- the court must award costs unless it states good reasons for denying them." *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 945 (7th Cir. 1997).

In the case at bar, Karsten seeks to recover costs from Vardon for deposition transcripts, copies of patents and patent prosecution file histories, and general photocopying. With respect to deposition transcripts, Karsten asks for \$ 4,131.35 for [*5] (1) the deposition of Vardon owner and inventor Dillis Allen, (2) Allen's video deposition, and (3) copies of transcripts of Karsten's Rule 30(b)(6) depositions of L. Beacom and M. Trueblood. Vardon contends that section 1920 does not permit recovery of costs associated with video depositions. This position is without merit, as the Seventh Circuit has held that [HN2] video depositions are allowable costs so long as they are necessary to the litigation. See *Held v. Held*, 137 F.3d 998, 1002 (7th Cir. 1998). Given Allen's position -- the owner of the plaintiff company and the inventor of the patent-in-suit -- his deposition was necessary to the litigation. Vardon protests that Allen's deposition was irrelevant to the collateral estoppel issue that decided this case. While this may be true, it misses the point. [HN3] In determining whether to award costs to Karsten as the prevailing party, our concern is not what issue ultimately decided the case. Rather, the statute compels us to decide whether certain costs were necessary to the litigation and are therefore recoverable. In this case, the examination of the owner of the patent-in-suit was necessary to Karsten's intervening rights [*6] defense, which Karsten reasonably raised and which Vardon did not challenge when Karsten asked for

discovery on it. The cost of the deposition is therefore recoverable, as are the other deposition-related costs that Karsten desires.

Likewise, costs associated with copies of the patent file and general photocopies are taxable. Despite Vardon's objections, these documents were necessary for use in the case Vardon initiated against Karsten. Vardon claims that some of the requests are duplicative. The two receipts to which Vardon points are not plainly duplicative, however, especially in light of Vardon's concession that the Patent Office's files were incomplete. In light of these difficulties, the copying costs appear neither duplicative nor excessive.

2. Attorney's Fees

Karsten also seeks to recover attorney's fees pursuant to Rule 54(d)(2)(E) as a sanction for what Karsten terms Vardon's "bad faith conduct." The record before the Court does not bear out a claim of bad faith. Vardon first revealed its awareness of the defect in claim 22 in its reply brief of April 26, 2001 to the motion to amend the complaint. During a status hearing of May 9, 2001, Vardon's counsel repeated [*7] the discovery in open court. Although Karsten flings accusations in its briefs about Vardon filing suit on a patent claim it knew was defective, Karsten offers no substantiation of this accusation. Nowhere does Karsten point to evidence probative of Vardon's awareness of the defect at some point prior to the April 26 revelation. Absent any such substantiation, an accusation of bad faith simply cannot stand, and the motion for attorney's fees must be denied.

CONCLUSION

For the foregoing reasons, we grant Karsten's motion to recover costs and deny the motion for attorney's fees.

Charles P. Kocoras

United States District Judge

Dated: September 20, 2001

2000 U.S. Dist. LEXIS 13769, *

Time of Request: April 29, 2004 09:22 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5301941 or 5,301,941

3 of 4 DOCUMENTS

**Vardon Golf Company, Inc., Plaintiff, v. Karsten Manufacturing Corporation,
Defendant.**

No. 99 C 2785

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2000 U.S. Dist. LEXIS 13769

**September 7, 2000, Decided
September 13, 2000, Docketed**

DISPOSITION: [*1] Karsten's motion for summary judgment GRANTED IN PART and DENIED IN PART.

CASE SUMMARY:

PROCEDURAL POSTURE: In a patent infringement action relating to golf club head design, defendant manufacturer moved for summary judgment.

OVERVIEW: Plaintiff golf club manufacturer owned two patents at issue. One patent was called "Set of Golf Clubs With Enlarged Faces"; the other, "Golf Club With Increased Radius of Gyration and Face Reinforcement". The clubs covered by the patents is of the "cavity back" or "perimeter weighted" style, where the weight of the golf club is not directly behind the place where the golfer ideally wants to hit the ball, but instead, the weight is distributed on the perimeter of the club. Defendant made both irons and woods of the perimeter-weighted type. Plaintiff claimed that defendant's irons and woods infringed on plaintiff's patents. Defendant moved for summary judgment. The court granted and denied defendant's motion in part. The court held inter alia that although defendant disputed whether its clubs perform a function identical to the function performed by plaintiff's clubs (i.e., club face enlargement), summary judgment to defendant on this particular claim was appropriate because defendant's clubs did not have an equivalent structure.

OUTCOME: The court granted and denied defendant's motion in part. Although defendant disputed whether the its golf clubs perform a function identical to the function performed by the clubs in plaintiff's (i.e., club face enlargement), the court granted summary judgment to defendant because its clubs do not have an equivalent structure.

LexisNexis (TM) HEADNOTES - Core Concepts:***Patent Law > Jurisdiction & Review > Subject Matter Jurisdiction***

[HN1] The United States Constitution empowers Congress to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. U.S. Const. art. I, § 8, cl. 8. Under the current state of patent law, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent. 35 U.S.C.S. § 271(a).

Patent Law > Infringement > Doctrine of Equivalents Patent Law > Infringement > Acts of Infringement

[HN2] Claims for infringement take two forms -- literal infringement or infringement under the doctrine of equivalents.

Patent Law > Infringement > Summary Judgment
Patent Law > Infringement > Doctrine of Equivalents

[HN3] Absent a genuine issue of material fact, the court will grant summary judgment in favor of an alleged infringer in the context of literal infringement if no reasonable jury could determine that the accused device meets every limitation of the properly construed claims, and in the context of the doctrine of equivalents if no reasonable jury could determine that a claim limitation is met in the accused device by an equivalent.

Patent Law > Infringement > Claim Interpretation
Patent Law > Infringement > Summary Judgment

[HN4] Claim construction is purely a matter of law for the court. To construe the claims at issue, the court looks to intrinsic evidence in the record, including the claim language, the specification language, drawings, and the prosecution history. Once construed, the court compares the claim to the allegedly infringing device. The infringement inquiry, while not a question of law, can be resolved on summary judgment in appropriate cases.

Patent Law > Infringement > Claim Interpretation

[HN5] A claim phrase that uses the word "means," presumptively invokes the sixth paragraph of 35 U.S.C.S. § 112 (Paragraph Six), which guides claim interpretation. Paragraph Six provides that an element in a claim or a combination may be expressed as a means or step for performing a specified function without the recital of structure, material or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. Two things will take a claim out of the plain language of Paragraph Six: first, failure to recite a function that corresponds with the means stated; and second, recitation of sufficient structure, material, or acts to perform the function. As some courts say, in those instances the presumptive applicability of Paragraph Six is overcome.

Patent Law > Infringement > Claim Interpretation
Patent Law > Infringement > Doctrine of Equivalents

[HN6] Where one claim element is completely missing, there is no literal infringement or infringement under the doctrine of equivalents.

Civil Procedure > Summary Judgment > Supporting Papers & Affidavits

[HN7] Permissible forms of support for summary judgment include, among other things, affidavits but not unsworn declarations.

Patent Law > Infringement > Burdens of Proof
Patent Law > Infringement > Acts of Infringement

[HN8] Under the patent statutes, a patent enjoys a presumption of validity, 35 U.S.C.S. § 282, which can be overcome only through clear and convincing evidence. When evaluating a motion for summary judgment, the court views the record evidence through the prism of the evidentiary standard of proof that would pertain at a trial on the merits.

Patent Law > Infringement > Defenses
Patent Law > Infringement > Acts of Infringement

[HN9] The absence of a single claim limitation is dispositive on the question of non-infringement.

Patent Law > Infringement > Claim Interpretation

[HN10] A thing is substantially the same as another if it performs the substantially the same function in substantially the same way to obtain the same result.

Patent Law > Infringement > Claim Interpretation

[HN11] The specification may help define the terms of the claims, but the claim language is not to be contradicted by the drawings or the description of the preferred embodiments.

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JUDGES: David H. Coar, United States District Judge.

OPINIONBY: David H. Coar

OPINION:

MEMORANDUM OPINION AND ORDER

Plaintiff, the Vardon Golf Company, has sued Karsten Manufacturing alleging that it infringed on the inventions protected by U.S. Patent No. 5,401,021 called "Set of Golf Clubs With Enlarged Faces" ("the '021 Patent") and U.S. Patent No. 5,301,941 called "Golf Club With Increased Radius of Gyration and Face Reinforcement" ("the '941 Patent"). Before [*3] this Court are Karsten's motions for summary judgment and Vardon's cross-motions for summary judgment on Claim 3 of the '021 patent.

Background

Vardon owns the rights to two golf-club patents at issue in this case. The '021 Patent concerns "irons" and the '941 concerns "woods." The golf clubs covered by these inventions are of the "cavity back" or "perimeter weighted" style, where the weight of the golf club is not directly behind the place where the golfer ideally wants to hit the ball (a.k.a. "the sweet spot"), but instead, the weight is distributed on the perimeter of the club. Karsten makes both irons and woods of the perimeter-weighted type. Vardon claims that Karsten's ISI iron-type clubs and the TiSI woods infringe on the '021 and '941 Patents. Karsten has moved for summary judgment and in response, Vardon has cross-moved for summary judgment.

Discussion

[HN1] The United States Constitution empowers Congress to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. Art. I, § 8, cl. 8. Under the current state of patent law, "whoever without [*4] authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C. § 271(a) (1999). [HN2] Claims for infringement take two forms -- both of which have been charged here -- literal infringement or infringement under the doctrine of equivalents. See, e.g., *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 606, 94 L. Ed. 1097, 70 S. Ct. 854 and 612 (1950). [HN3] Absent a genuine issue of material fact, the Court will grant summary judgment in favor of an alleged infringer in the context of literal infringement if no reasonable jury could determine that the accused device meets every limitation of the properly construed claims, see, e.g., *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1476 (Fed. Cir. 1998), and in the context of the doctrine of equivalents if no reasonable jury could determine that a claim limitation is met in the accused device by an equivalent. See *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39 n.8, 137 L. Ed. 2d 146, 117 S. Ct. 1040 (1997).

To resolve the summary judgment motions [*5] on Vardon's infringement claims, this Court first must determine what it is that his patent pertains to (i.e., claim construction) and then must compare the patent to the allegedly infringing golf clubs. See, e.g., *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1301-02 (Fed. Cir. 1999). [HN4] Claim construction is purely a matter of law for the Court. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996); see also *Vardon Golf Co. v. Supreme Golf Sales, Inc.*, 1990 U.S. Dist. LEXIS 8996,

No 89 C 2654, 1990 WL 114498 (N.D. Ill. July 20, 1990). To construe the claims at issue, the Court looks to intrinsic evidence in the record, including the claim language, the specification language, drawings, and the prosecution history. See, e.g., Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). Once construed, the Court compares the claim to the allegedly infringing device. The infringement inquiry, while not a question of law, can be resolved on summary judgment in appropriate cases. See Fed. R. Civ. P. 56(e).

Part I - U.S. Patent No. 5,401,021

Construction of Claim 3

This Court has previously construed [*6] parts of Claim 3 in Vardon v. Golfsmith, et al., 2000 U.S. Dist. LEXIS 14259, No. 99 C 2944 (N.D. Ill. June 6, 2000) Mem. Op. and Order at 3-5. n1 The dispositive "claim phrase" or "limitation" with respect to Claim 3 in this case, as in Vardon v. Golfsmith, is:

means for enlarging the ball striking face to the above value without increasing head weight including a ball striking reinforcing network in the rear cavity of the club head defined by the perimeter wall.

Col. 9, lines. 60-64 (emphasis added). [HN5] A claim phrase that uses the word "means," presumptively invokes the sixth paragraph of 35 U.S.C. § 112 ("Paragraph Six"), see Rodime PLC v. Seagate Technology, Inc., 174 F.3d 1294, 1302 (Fed. Cir. 1999), which guides claim interpretation. See 35 U.S.C. § 112, P 6. Paragraph Six provides that "an element in a claim or a combination may be expressed as *a means or step for performing a specified function without the recital of structure, material or acts* in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. [*7] " Id. (emphasis added). Two things will take a claim out of the plain language of Paragraph Six: first, failure to recite a function that corresponds with the means stated; and second, recitation of sufficient structure, material, or acts to perform the function. As some courts say, in those instances the presumptive applicability of Paragraph Six is overcome. See, e.g., Rodine, 174 F.3d at 1302.

n1 The Court has also construed phrases from Claims 4, 5, 7, 9, 11, 12, and 14 of the '021 Patent and phrases from Claims 12-18 of the '941 Patent.

Paragraph Six applies in this case because neither of the conditions mentioned above is present. The language of Claim 3 at issue here ties a function ("enlarging the ball striking face to [6 in.<2> for the six iron]") to the word means. Consequently, the presumptive applicability of Paragraph Six is not overcome on this basis. The claim phrase also recites a structure ("a ball striking reinforcing network in the rear cavity of the club head defined [*8] by the perimeter wall"), but this structure is described in extremely generic terms. There is nothing "definite" about the structure described simply as a "reinforcing network," and Vardon has not demonstrated that the phrase has any commonly-understood meaning in the golf-club industry. See Mas-Hamilton Group v. LaGard, Inc., 156 F.3d 1206, 1213-14 (Fed. Cir. 1998) (analyzing a claim under Paragraph Six because the structural phrase "lever moving element" did not have a generally understood structural meaning in the relevant art). Thus, Claim 3 is properly construed under Paragraph Six.

Since Paragraph Six applies, Claim 3 covers "the corresponding structure . . . described in the specification and equivalents thereof." 35 U.S.C. § 112, P 6. The only description of a "reinforcing network" in the entire specification is a "three-element-perimeter weighting" system. See Col. 5, lines 58-59. These three elements are "[1] the horizontal concave bar in the rear cavity, [2] a generally vertical bar also concave intersecting the horizontal bar, and [3] a unit cellular configuration that has a concave configuration similar to that of the [*9] cross bars . . . [that have] their minimum depth at the geometric center and [their] maximum depth around the perimeter of the club head." Col. 5, lines 54-62. Additionally, the same three elements are described in the preferred embodiment as the means for, among other things, increasing the area of the club face. See Col. 7, lines 54-61. Thus, Claim 3 requires this three-element "reinforcing network" or its equivalents.

Comparison of Claim 3 to the Ping ISI Clubs

Karsten is entitled to summary judgment with respect to Claim 3 because the ISI clubs do not use the three-element structure disclosed in the '021 specification or an equivalent structure. To literally infringe on the means-plus-function claims of Vardon's patent, Karsten's clubs must have an "equivalent" structure and perform the identical function -- both the structure and the function equivalents are required. See Mas-Hamilton Group, 156 F.3d at 1212. Although Karsten disputes whether the ISI clubs perform a function identical to the function performed by the clubs in Vardon's '021 Patent, (i.e., club face enlargement), the Court grants summary judgment to Karsten because the ISI clubs [*10] do not have an equivalent structure. Id.

The ISI irons do not have three-element structures. The ISI clubs have several elements in the cavity of the club, however, there is no unit cellular structure reinforcing the club face. For this reason, Karsten is entitled to summary judgment on Claim 3 with respect to both literal infringement and infringement under the doctrine of equivalents. *Lairam Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1535 (Fed. Cir. 1991) ([HN6] where one claim element is completely missing, there is no literal infringement or infringement under the doctrine of equivalents).

Construction of Claim 4

Claim 4 also uses the term "means." As noted above, the use of the word "means" presumptively invokes Paragraph Six and the means-plus-function interpretive analysis. In this claim, as in Claim 3, the language of the claim ties a function ("for increasing the effective hitting area or sweet spot without increasing overall club head weight") to the word means. Consequently, the presumption of applying Paragraph Six is not overcome on this basis.

Claim 4 also recites a structure, but like the structure described in Claim 3 it is not sufficiently specific. [*11] Claim 4 and dependent Claim 5 both require:

a plurality of reinforcing elements integral with the perimeter wall and the cavity bottom wall *extending completely across the cavity*, said elements extending in a direction perpendicular to the bottom wall defined as element thickness, said element thickness being at its minimum value at the hitting area of the face wall and generally progressively increasing in value outwardly to the perimeter wall.

Col. 10, lines 31-38 (emphasis added). While Claim 4 describes many structural elements (e.g., multiple reinforcing elements that jut up in the rear cavity of the club), the phrase "extending completely across the cavity" does not have a commonly understood meaning in the golf-club industry and is not sufficiently specific to take the claim outside of Paragraph Six.

At first blush, this phrase seems fairly straightforward and definite. Consider an analogy between the shape of our country and a golf club. Few would find it controversial, for example, to describe a journey beginning in Northern Maine and ending in Southern California as one "extending completely across" the United States. Such a journey begins and ends at [*12] roughly opposite corners of the country and would likely n2 pass through or near the geographic center of the country. Similarly, a rib that extended from

the top corner of the toe of the club to the lower corner of the heel would also likely qualify as extending "completely across the cavity."

n2 The necessity of the term "likely" points up further obfuscating questions. For example, if the Maine-to-California journey meandered down the Appalachian trail to Georgia and then headed due west to California, could it still be characterized as a journey that "extended completely across" the United States?

Upon closer examination, however, the phrase "extends completely across the cavity" is actually quite vague. Would a journey from Northern Maine to Southern Florida "extend completely across" the United States? What about a journey from Virginia to Arizona? From North Dakota to Louisiana? These are more difficult questions to answer. Add to these journeys the possibility that they might or might not go near or through [*13] north central Kansas (the geographic center of the United States, see U.S. Geographical Survey, Science Challenge Quiz Site, Q & A No. 31 (http://www.usgs.gov/sci_challenge.html) and the question is even more complicated. To add further confusion to the mix, it is not at all clear that five separate journeys, beginning at various points on the United States border and ending somewhere in central Kansas, could be characterized as journeys that collectively "extend completely across" the United States.

The cavity defined in the rear of perimeter-weighted golf clubs have both somewhat flat and curved side walls. The cavities are, like the borders of the United States, irregularly shaped. As the analogies above make clear, it is insufficient to describe a reinforcing rib or series of ribs that "extend completely across" the rear cavity. Such a description would not inform a person versed in the art of golf-club manufacturing of the structure specified. Ironically, although Claim 4 requires more than Claim 7, its requirements are less definite because of vagueness of the phrase "extends completely across the cavity." This additional requirement obscures the claim rather than making [*14] it more definite.

Since Paragraph Six applies, Claim 4 must be construed to cover the "corresponding structure, material, or acts described in the specification and equivalents thereof." 35 U.S.C. § 116, P 6. The structure described in the '021 Patent "for increasing the effective hitting area or sweet spot without increasing overall club head weight" Col. 10, lines 28-30, is a "three-element-perimeter weighting" system. See Col. 5, lines 58-59. The '021 Patent discloses no other structure for this

purpose. These three elements are "[1] the horizontal concave bar in the rear cavity, [2] a generally vertical bar also concave intersecting the horizontal bar, and [3] a unit cellular configuration that has a concave configuration similar to that of the cross bars . . . [that have] their minimum depth at the geometric center and [their] maximum depth around the perimeter of the club head." Col. 5, lines 54-62. Additionally, the same three elements are described in the preferred embodiment as the means for, among other things, increasing the area of the club face. See Col. 7, lines 54-61. Thus, Claim 4 requires this three-element "reinforcing network" [*15] or its equivalents.

Comparison of Claims 4 & 5 to the Ping ISI Clubs

Karsten is entitled to summary judgment for non-infringement with respect to Claim 4 for precisely the same reason that it is entitled to summary judgment on Claim 3. See *infra* Discussion regarding Comparison of Claim 3 to the Ping ISI Clubs. Since Claim 5 depends on Claim 4, Karsten is also entitled to summary judgment for non-infringement on Claim 5. n3

n3 Since the Ping ISI irons do not have the three-element reinforcing structure required by Claims 4 & 5, the Court does not rely on the further limitations of Claim 5 in granting Karsten's motion for summary judgment.

Construction of Claim 7

One of the limitations with respect to Claim 7 reads as follows:

[a] means to reinforce the face wall and enlarge the effective hitting area of the golf club

Col. 10, lines 54-56. As noted above, the use of the word "means" presumptively invokes Paragraph Six and the means-plus-function interpretive analysis. In this [*16] claim, as in Claim 3, the language of the claim ties a function ("to reinforce the face wall and enlarge the effective hitting area of the golf club") to the word means. Consequently, the presumption of applying Paragraph Six is not overcome on this basis.

The claim phrase also recites a structure, which unlike Claim 3 is sufficiently specific. The structure is described as:

[1] *a progressive face wall reinforcing element* in the cavity [a] extending from the approximate center of the rear of the

face wall outwardly in the cavity to the perimeter wall, [b] said element being integral with both the face wall and the perimeter wall, [and c] said reinforcing element incrementally increasing in height from the approximate center of the rear of the face wall to the perimeter wall,

[2] whereby the club face is supported by *at least one structural arch*.

Col. 10, lines 56-68 (emphasis, numbers and letters added). This structure is sufficiently detailed to take interpretation outside of the language of Paragraph Six. See, e.g., *Cole v. Kimberly Clark Corp.*, 102 F.3d 524, 527 (Fed. Cir. 1997). Since the structure described is sufficiently [*17] detailed, it is not necessary also to link the means to a structure described in the patent specification or its equivalents. *Id.* Claim construction here focuses on the language itself.

Claim 7 describes both "*a progressive face wall reinforcing element*" and "*at least one structural arch*." Col. 10, lines 59-60, 67-8 (emphasis supplied). Whereas Claim 7 describes only a singular progressive face wall element, it seems also to require "at least one" structural arch. Although this number disagreement suggests two separate claim limitations, more than one arch could combine to make a single "element." Additionally, the reinforcing element and structural arch requirements are tied not by a conjunction, but by the word "whereby." This also suggests that the progressive face-wall element is further described as -- not in addition to -- a structural arch or set of arches. See *Texas Instruments, Inc. v. U.S. ITC*, 988 F.2d 1165, 1171-72 (Fed. Cir. 1993) ("the Commission correctly determined that the 'whereby . . . ' clauses do not contain any limitations not inherent to the process found in [the] claims"). The description of the progressive face wall element confirms [*18] this reading. That element, which is integral with the face wall and the perimeter wall, is at its minimum height near the geometric center of the club and increases in height as it nears the perimeter wall, describes an arch or group of arches.

Although the element/arch height must increase as it moves away from the geometric center and towards the perimeter wall, the rate of increase is not dictated in the claim. Cf. Col. 11, lines 67-68 and Col. 12, lines 1-3 (describing a parabolically arched reinforcing bar). Thus the arch could be, for example, curved or flat. See, e.g., *The American Heritage Dictionary* 124, (2d Ed. 1982) (defining "arch" as "[a] structural device, esp[ecially] of masonry, forming a curved, pointed or *flat* upper edge of an opening . . .") (emphasis added). Further, nothing in the language of Claim 7 requires the structural arch to

span the entire cavity in the rear of the club. On the contrary, the claim language describes an arch or arches that are shortest at or near the geometric center of the club and increase in height as the arch moves towards the perimeter wall.

Comparison of Claim 7 to the Ping ISI Irons

Karsten is entitled to [*19] summary judgment for literal non-infringement on Claim 7. The Ping ISI irons have many, but not all of the limitations in Claim 7. The Ping ISI irons have several bars in the rear cavity of the club that reinforce the club face. These bars extend "from the approximate center of the rear of the face wall outwardly in the cavity to the perimeter wall." Col. 10, lines 60-62. The ribs, which together form a "reinforcing element" are also "integral with both the face wall and the perimeter wall." Col. 10, lines 63-64. The only truly disputed claim phrase is whether or not the "element" in the rear cavity of the Ping ISI clubs increases incrementally in height from the approximate center to the perimeter wall or not. An examination of the Ping ISI iron reveals that it does not. Col. 10, lines 66-68.

In support of its non-infringement assertion on this claim phrase, Karsten relies on the opinion of its expert, Professor Emeritus Donald L. Creighton. Professor Creighton concludes that the Ping ISI irons do not infringe on Claim 7 because, among other things, the reinforcing element does not increase in height, "point to point from the approximate center of the rear face wall to the surrounding [*20] perimeter wall." To support his conclusion, Dr. Creighton relies on a blurred, unmeasured, and unlabeled photocopy of a Ping ISI iron. Neither Karsten nor Vardon have provided drawings or measurements revealing the dimensions of the golf club in the drawing. n4 This bald assertion that the ribs do not increase in height, however, is not proper or sufficient support for a motion for summary judgment. The height change of the ribs as they extend towards the perimeter wall is still essentially unknown at this stage of the proceedings.

n4 Although Karsten submits a photocopy of a Ping ISI iron, upon which Professor Creighton purports to rely in concluding that the reinforcing elements do not increase incrementally, this drawing is not labeled or marked in any way. Given the quality of the photocopy and the lack of corresponding measurements, it is an extremely poor substitute for the physical exhibit. It does not, contrary to Karsten's assertions, undisputedly show the lack of this claim element.

The sketches attached and unsworn declaration of James Stade is not relevant on this

motion for summary judgment. See Fed. R. Civ. P. 56(e) ([HN7] permissible forms of support for summary judgment include, among other things, affidavits but not unsworn declarations), cf. 28 U.S.C. 1746 (sworn declarations may be submitted in lieu of an affidavit). Even if Stade had sworn to his declaration, there are still no corresponding measurements in his sketches and Stade himself does not assert that all of the figures are proportionally accurate.

[*21]

Notwithstanding the shortcomings of Professor Creighton's report, Karsten is still entitled to summary judgment for literal non-infringement. The reinforcing element in the rear of the ISI irons consists of not only five linear ribs but also of a ring surrounding a dot. From this ring-and-dot reinforcement, the five ribs extend toward the perimeter wall. The dot appears in the approximate center of the rear cavity. Outside the dot, the element height decreases substantially and then increases again at the ring surrounding the dot. Outside the ring, the reinforcing element again decreases dramatically. From there, the ribs begin. Thus, even despite the lack of evidence regarding the rib height, Karsten is still entitled to summary judgment for literal non-infringement because the reinforcing element as a whole decreases, increases and decreases (and possibly increases again) in height as it extends from the approximate center to the perimeter wall. This does not literally satisfy the language of Claim 7.

The analysis, however, is not as simple under the doctrine of equivalents. No evidence has been presented regarding the doctrine of equivalents on Claim 7. Thus it is inappropriate [*22] at this stage of the proceedings to determine whether the variations in height in reinforcing element in the rear cavity of the Ping ISI club is "equivalent" to the structure set forth in Claim 7. With respect to the doctrine of equivalents, Karsten's motion is denied.

Construction of Claim 8 and Comparison to Karsten's ISI Clubs

Karsten's motion for summary judgment of non-infringement on Claim 8 under the doctrine of equivalents is also denied. n5 Claim 8 depends from Claim 7 and further requires "four weighting elements formed integrally with the forward wall each having a minimum depth near the center of the face wall and a maximum depth at the perimeter wall." The Ping ISI irons have four elements -- indeed these irons have five ribbed "elements" -- in the rear cavity of the club. As with Claim 7, however, it is unclear whether any of them arch or ramp from the center to the perimeter. For this

reason, Karsten's motion with respect to Claim 8 is denied under the doctrine of the equivalents.

n5 For the same reasons discussed in terms of Claim 7, Karsten is entitled to summary judgment on its defense of literal non-infringement as to Claim 8.

[*23]

Construction of Claim 12 and Comparison to Karsten's ISI Iron Clubs

Karsten is also entitled to summary judgment on Claim 12. Claim 12 requires "a pair of crossed reinforcing bars" in the rear cavity of the club head. By its very language, Claim 12 requires a pair of bars (i.e., two bars) and requires that the pair cross. The Ping ISI irons have five bars. Also, none of these bars "cross." Instead, each arranged radially around a center ring at approximately equal intervals. None of the bars appear to even touch the ring, let alone touch or cross each other. Since this element is completely lacking, Karsten is entitled to summary judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickinson*, 922 F.2d 792 at 798.

Construction of Claim 14

Claim 14 is in many respects similar to Claim 7. Whereas Claim 7 requires a "progressive face wall reinforcing element," however, Claim 14 requires a "plurality of face wall reinforcing . . . elements." Compare Col. 10, lines 59-60 with Col. 12, lines 12-3. Claim 14 does not require the reinforcement to be "progressive." It does, nevertheless, require [*24] that "at least one of the elements incrementally increases in height from the approximate center of the rear of the face wall to the perimeter wall." Col. 12, lines 18-21. Unlike Claim 7, however, the entire "reinforcing element" need not be at its minimum point at the approximate center of the club. And, the entire element need not increase as it moves towards the perimeter wall. Put another way, a golf club described by Claim 14 could have several flat reinforcing elements only one of which "arched" or ramped from a low point near the center toward a high point integral with the perimeter wall.

Comparison of Karsten's ISI Iron Clubs to Claim 14

Karsten is not entitled to summary judgment for non-infringement with respect to Claim 14. Although Claim 14 only requires one element to increase incrementally in height relative to the cavity-bottom wall as it moves from the approximate center to the perimeter

wall, as noted above with respect to Claim 7, Karsten has not provided sufficient evidence with respect to the height of any of the ribs. Without such evidence, it is impossible to tell whether any one of the reinforcing ribs "incrementally increases in height from the approximate [*25] center of the rear of the face wall to the perimeter wall." Since Karsten has not properly supported its motion for summary judgment, it is denied. n6

n6 Karsten is not entitled to summary judgment on Claim 15 for the same reasons articulated with respect to Claim 8. See *infra*.

Validity of the '021 Patent

Karsten is not entitled to summary judgment on its invalidity defense. [HN8] Under the patent statutes, a patent enjoys a presumption of validity, see 35 U.S.C. § 282, which can be overcome only through clear and convincing evidence. See, e.g., *United States Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1563, 41 U.S.P.Q.2D (BNA) 1225, 1232 (Fed.Cir.1997). "When evaluating a motion for summary judgment, the court views the record evidence through the prism of the evidentiary standard of proof that would pertain at a trial on the merits." *Eli Lilly & Co. v. Barr Labs., Inc.*, 222 F.3d 973, 2000 U.S. App. LEXIS 19021, Nos. 99-1262, 99-1303, 99-1263, 99-1264, 2000 WL 1114915, at *4 (Fed. Cir. Aug. 9, 2000) [*26] (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252-53, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)).

The pictures of prior art upon which Karsten relies, however, do not convincingly demonstrate that the '021 Patent is invalid. Karsten trots out and relies on photocopies of two clubs -- Shear-Line and Pro/Tour Spectrum ("Spectrum") irons. Nowhere in its motion for summary judgment on its invalidity defense, however, does Karsten explain the specifications of these clubs. Of particular importance for both Claim 7 and Claim 14 is the "ramping" or "arching" character of reinforcing elements in the rear cavity of the clubs. Karsten, however, does not provide (other than by visual inspection of the photocopies) any means for determining whether the reinforcing elements (assuming the Shear-Line and Spectrum elements do reinforce the club face) increase in height relative to the cavity bottom wall as the element moves from the approximate center to the perimeter wall. Karsten's motion for summary judgment on its defense of invalidity is therefore denied.

Part II - U.S. Patent No. 5,301,941

The primary focus regarding the '941 patent are several limitations found in Claim 12. Those three limitations [*27] are discussed below and their

construction and application to the golf clubs at issue resolve Karsten's motion for summary judgment. Although Claim 15 does not depend on Claim 12, it has the second and third limitations discussed below related to Claim 12. Since the absence of a single element from the Ping TiSi club disposes of Karsten's motion, the Court does not construe or rely upon each and every element raised and discussed in the parties' brief. See, e.g., *Wolverine World Wide, Inc. v. Nike, Inc.*, 38 F.3d 1192, 1199 (Fed. Cir. 1994) ([HN9] the absence of a single claim limitation is dispositive on the question of non-infringement). For simplicity's sake, the Court refers to these limitations as "Claim 12" limitations.

Contrary to Karsten's argument, the golf clubs described in Claim 12 require only one wall. Claim 12 first requires that the golf clubs have "a high impact forward wall . . . having a ball impacting face wall with a plurality of generally parallel grooves." Col. 11, lines 14-18 (emphasis added). The context of this claim specifically and of the patent as a whole suggests that the "high impact forward wall" simply has a face, not a "face wall," with [*28] many, roughly-parallel grooves on that face. The phrase "face wall" is not used in these other claims as a shorthand for the composite plastic covering wall. Instead, in these other claims, "face wall" generically refers to the ball striking surface, regardless of whether it is metal or plastic. n7

n7 Another way of looking at it is that the word "wall" is used to mean two different things. First for example, by wall it means an entire structure that divides two rooms. Second, by wall it means the surface of that structure viewed from inside either of these rooms. In any case, it could not require two of the first types of walls.

Read any other way, the claim would require a "wall . . . having a . . . wall." This construction does not make sense and will not be adopted, see *Baxter Int'l Inc. v. McGaw, Inc.*, 1996 U.S. Dist. LEXIS 1527, No. 95 C 2723, 1996 WL 66139, *7 (N.D. Ill. Feb. 12, 1996) (rejecting claim construction that made "no sense"), despite Karsten's reliance on the examiner's reasons for allowance in support of its argument that this language requires two walls. The examiner's reasons, which purport to relate to Claims 1-14 and mention two separate walls, only state that these claims were allowed over the prior art "in part" because of the two-wall system. The two-wall system does not purport, by the examiner's own words, to be the only reason for allowance.

[*29]

Comparing Claims 1 and 12 also illustrates that the latter claim only requires one wall. By contrast to claim 12, Claim 1 requires two distinct walls -- one metal and one plastic wall -- so that the thickness of the metal wall can be reduced without it caving in when the golfer, swinging the club head upwards of 100 mph, hits the golf ball. In a Claim 1 golf club, a face-reinforcing matrix juts forward from the forward wall and second plastic wall provides a smooth covering surface to the matrix of supporting bars. Unlike Claim 1 and other claims in the '941 patent that describe in detail two "walls," see, e.g., Col. 9, lines 21-25, Claim 12 never mentions a separately molded, plastic covering wall. Claim 12 also does not require a reinforcing matrix of bars jutting out from the forward wall. Instead, as noted in more detail below, it simply requires a forward wall with "substantially uniform thickness." Col. 11, lines 20-21. In short, Claim 12 requires one, not two walls.

The second claim limitation upon which the parties focus is that the forward wall must have a "substantially uniform thickness inside the perimeter wall." Interpretation of this claim phrase turns on the meaning [*30] of the modifying term "substantially." The term "substantially" does not mean "essentially" or "exactly" but is a relative term which the Court interprets in context. See, e.g., *John Blue Co. v. Dempster Mill Mfg. Co.*, 172 F. Supp. 23, 27 (D. Neb. 1958). In the context of machine-tooled metal, "where tolerances are measured in by a micrometer, "substantially uniform thickness" . . . would call for differentials of no more than perhaps 0.001 [inches]. But in dealing with (say) the topography of mountain ranges, 'substantially uniform' height . . . could permit differences of hundreds of feet or more." *O'Hara Mfg. Ltd. v. Eli Lilly*, 1986 U.S. Dist. LEXIS 22546, at *40 n.8, No. 85 C 3979 (N.D. Ill. July 18, 1986). In the production of ice cream, by further contrast, a claim term requiring production temperatures "substantially" in a certain range is still satisfied by temperatures falling a degree or two outside of that range. See *Dippin' Dots v. Mosey*, 1997 U.S. Dist. LEXIS 20896, at *13-14, No. 3:96-CV-1969-X (N.D. Tex. Mar. 31, 1997). Implicit in these contrasting examples is the principle that the function of the thing at issue [*31] is an important consideration in defining this term. See *John Blue Co.*, 172 F. Supp. at 27. Thus, "[HN10] a thing is substantially the same as another if it performs the substantially the same function in substantially the same way to obtain the same result." *Id.*

The context of the term "substantially" in this case is investment cast metal. It is undisputed on the summary judgment record, that the standard tolerance for investment casting is ± 0.005 inches or $\pm 0.5\%$. n8 Also instructive (present in Claim 12 but absent from Claim 15) is the phrase immediately following the claim

phrase "substantially uniform thickness." In Claim 12, the subsequent phrase explains that the purpose of the uniform wall is to "reduce club head weight." Col. 11, lines 21-2. Reduced club head weight allows larger a club face and increases the radius of gyration, which are both focuses of the '941 Patent. This purpose supports the conclusion that substantially uniform in this context allows thickness deviations at or near the standard commercial tolerance.

n8 Vardon points out that the wall of "substantially uniform thickness" also has "a plurality of generally parallel grooves." The Court reads these two terms to co-exist in Vardon's claims and thus interprets substantial uniformity without regard to the groove depth.

[*32]

Although this construction of "substantially uniform thickness" excludes *some* of the preferred embodiments from claims that contain this limitation, it does not exclude these embodiments from every claim in the '941 patent. In fact, the claims that specifically discuss the reinforcing matrix covered by a plastic face wall do not contain the "substantially uniform thickness" limitation. See, e.g., Claim 1, Col. 9, lines 12-25. Thus, despite some of the drawings, exceptionally wide variances in wall thickness cannot be encompassed within this limitation. Such an interpretation would impermissibly allow a drawing to contradict the plain language of the claim and render the phrase nonsensical. See, e.g., *Raleigh v. Tandy Corp.*, 1997 U.S. Dist. LEXIS 22130, *20, No C-95-2332-MHP (N.D. Cal. Jan. 9, 1997) ("[HN11] the specification may help define the terms of the claims, but the claim language is not to be contradicted by the drawings or the description of the preferred embodiments").

Comparison of the Ping TiSI Club to Claim 12 of the '941 Patent

Karsten does not contest the fact that each of the clubs in question has "a ball impacting face wall with a plurality [*33] of generally parallel grooves." Instead, it argues that Claim 12 requires two walls. Since, as noted above, the first limitation in Claim 12 does not require two separate walls, this aspect of Claim 12 is satisfied.

The Ping TiSI club, however, does not literally infringe the second (substantially-uniform-thickness) limitation for the ball-striking wall. The Ping TiSI club varies in thickness between 0.1087 inches and 0.0932 inches -- the latter thickness being slightly more than 94% the thickness of the former. This variation does not meet the literal requirement of substantial uniformity.

Since this limitation is completely absent, there can be no literal infringement, see, e.g., *Bayer AG v. Elan Pharmaceutical Research Corp.*, 212 F.3d 1241, 2000 WL 572705, *5 (Fed. Cir. 2000). and there can also be no infringement under the doctrine of equivalents, see, e.g., *Laitram Corp.*, 939 F.2d at 1535. Because the Court concludes that this aspect of Claims 12 and 15 is completely absent from the Ping TiSI golf clubs, the other claim phrases addressed by the parties are not decided here. Karsten's motion for summary judgment on claims 12 and 15 is granted. [*34]

Conclusion

For the foregoing reasons, with respect to the '021 Patent, the Court:

GRANTS Karsten's motion for summary judgment on Claim 3 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 4 and Claim 5 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 7 for non-infringement with respect to literal infringement; but DENIES Karsten's motion for summary judgment on Claim 7 with respect to infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 8 for non-infringement with respect to literal infringement; but DENIES Karsten's motion for summary judgment on Claim 8 with respect to infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 12 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents;

DENIES Karsten's motion for summary judgment on Claim 14 and Claim 15 for [*35] non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents.

DENIES Karsten's motion for summary judgment with respect to its invalidity defense on the '021 Patent.

With respect to the '941 Patent, the Court GRANTS Karsten's motion for summary judgment on Claims 12 and 15 with respect to both literal infringement and infringement under the doctrine of equivalents.

Enter:

David H. Coar

United States District Judge

Dated: SEP - 7 2000

Time of Request: April 29, 2004 09:23 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5301941 or 5,301,941

4 of 4 DOCUMENTS

**Vardon Golf Company, Inc., Plaintiff, v. Golfsmith International, Inc., et al.,
Defendants.**

No. 98 C 2944

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2000 U.S. Dist. LEXIS 14259

**June 6, 2000, Decided
June 8, 2000, Docketed**

DISPOSITION: [*1] With respect to '021 Patent, Goldsmith's motion with respect to the Penick and Jetstream clubs on Claims 3 through 5 infringement/infringements under doctrine of equivalents granted; both Golfsmith's motion and Vardon's cross-motion for Jetstream clubs on Claim 7 regarding literal infringement/infringements under doctrine of equivalents denied; Golfsmith's motion for Penick clubs on Claim 7 granted; Golfsmith's motion and Vardon's cross-motion for Penick clubs on Claim 7 regarding doctrine of equivalents denied; Golfsmith's motion with respect to Penick and Jetstream clubs on Claims 9, 11, 12, and 14 regarding literal infringement/infringement under doctrine of equivalents granted. With respect to '941 Patent, Golfsmith's motion for summary judgment with regard to literal infringement of Claims 12 through 18 granted. All motions for summary judgment with regard to doctrine of equivalents denied as are Vardon's cross-motions for summary judgment.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff and named defendant cross-moved for summary judgment in action alleging named defendant's and others' violation of plaintiff's two golf-club patents.

OVERVIEW: Plaintiff claimed named defendant and others infringed its golf-club patents for both irons and

woods of the perimeter-weighted type. With respect to the irons patent, plaintiff claimed two of defendant's golf clubs literally infringed claims 3 and 7, and infringed claims 4, 5, 9, 11, and 14 under the doctrine of equivalents. The court determined defendant was entitled to summary judgment on claims 3, 4, 5, 14, 9, 11, and 12, because defendant's clubs did not: use the three-element structure disclosed in the patent specification or an equivalent structure, have a "plurality" of face wall reinforcing elements, have a honeycomb structure in the rear cavity of the club head, increase in thickness in all directions, or have cross reinforcing bars. Defendant was entitled to summary judgment with respect to literal infringement of one club because the club did not have a perimeter wall that completely surrounded the club face; however, the court left to the jury the issue of whether the perimeter wall of the club was equivalent to the perimeter wall described in Claim 7 and did not address the perimeter-wall requirement of Claim 7 with respect to the second club.

OUTCOME: Summary judgment denied to plaintiff and granted to defendant regarding woods patent infringement claims. Regarding irons patent infringement claims: summary judgment granted to defendant on claims 3-5, 9, 11, 12, 14, and on claim 7 with respect to literal infringement on one club; denied to plaintiff and defendant on claim 7 with regard to doctrine of equivalents on the same club; and denied to both parties on the other club.

LexisNexis (TM) HEADNOTES - Core Concepts:***Constitutional Law > Congressional Duties & Powers > Copyright & Patent Clause***

[HN1] See U.S. Const. art. I, § 8, cl. 8.

Patent Law > Infringement > Acts of Infringement

[HN2] See 35 U.S.C.S. § 271(a).

Patent Law > Infringement > Acts of Infringement

[HN3] Claims for patent infringement take two forms: literal infringement or infringement under the doctrine of equivalents.

Patent Law > Infringement > Summary Judgment

[HN4] Absent a genuine issue of material fact, the court will grant summary judgment in favor of an alleged patent infringer in the context of literal infringement if no reasonable jury could determine that the accused device meets every limitation of the properly construed claims, and in the context of the doctrine of equivalents if no reasonable jury could determine that a claim limitation is met in the accused device by an equivalent.

Patent Law > Infringement > Claim Interpretation

[HN5] Claim construction is purely a matter of law for the court.

Patent Law > Infringement > Claim Interpretation

[HN6] To construe patent claims, the court looks to intrinsic evidence in the record, including the claim language, the specification language, drawings, and the prosecution history.

Patent Law > Infringement > Summary Judgment

[HN7] The patent infringement inquiry, while not a question of law, can be resolved on summary judgment in appropriate cases. Fed. R. Civ. P. 56(e).

Patent Law > Infringement > Claim Interpretation

[HN8] A claim phrase that uses the word "means," presumptively invokes 35 U.S.C.S. § 112, para. 6, which guides claim interpretation.

Patent Law > Infringement > Claim Interpretation

[HN9] See 35 U.S.C.S. § 112, para. 6.

Patent Law > Infringement > Claim Interpretation

[HN10] Two things will take a claim out of the plain language of 35 U.S.C.S. § 112, para. 6: first, failure to recite a function that corresponds with the means stated; and second, recitation of sufficient structure, material, or acts to perform the function.

Patent Law > Infringement > Acts of Infringement

[HN11] Where one claim element is completely missing, there is no literal infringement or infringement under the doctrine of equivalents.

Patent Law > Infringement > Claim Interpretation

[HN12] The specification may help define the terms of the claims, but the claim language is not to be contradicted by the drawings or the description of the preferred embodiments.

Patent Law > U.S. Patent & Trademark Office Prosecution Procedures > Reissue

[HN13] An action on an original patent that has been surrendered for reissue abates, if at all, when the patent is reissued, not when the patentee is awaiting reissue. 35 U.S.C.S. § 252.

COUNSEL: For VARDON GOLF CO INC, plaintiff: Thomas G. Scavone, Patrick Francis Solon, Keith A. Vogt, Dean D. Niro, Niro, Scavone, Haller & Niro, Ltd., Chicago, IL.

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For NICKLAUS GOLF EQUIPMENT COMPANY, L.C., defendant: James P. Ryther, Richard Blake Johnston, Piper, Marbury, Rudnick & Wolfe, Chicago, IL. Mary Spaulding Burns, Wilmette, IL.

For UT GOLF, INC., defendant: Joseph R. Marconi, Daniel Charles Murray, Kurt C. Meihofner, Johnson & Bell, Ltd., Chicago, IL.

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For NICKLAUS GOLF EQUIPMENT COMPANY, L.C., counter-claimant: James P. Ryther, Richard Blake Johnston, Piper, Marbury, Rudnick & Wolfe, Chicago, IL. Mary Spaulding Burns, Wilmette, IL.

JUDGES: David H. Coar, United States District Judge.

OPINIONBY: David H. Coar

OPINION:

MEMORANDUM OPINION AND ORDER

Plaintiff, the Vardon Golf Company, has sued Golfsmith International [*3] and a host of other golf club manufacturers and retailers alleging that they infringed on the inventions protected by U.S. Patent No. 5,401,021 called "Set of Golf Clubs With Enlarged Faces" ("the '021 Patent") and U.S. Patent No. 5,301,941 called "Golf Club With Increased Radius of Gyration and Face Reinforcement" ("the '941 Patent"). Before this Court are Golfsmith's motions for summary judgment and Vardon's cross-motions for summary judgment.

Background

Vardon owns the rights to two golf-club patents at issue in this case. The '021 Patent concerns "irons" and the '941 concerns "woods." The golf clubs covered by these inventions are of the "cavity back" or "perimeter weighted" style, where the weight of the golf club is not directly behind the place where the golfer ideally wants to hit the ball (a.k.a. "the sweet spot"), but instead, the weight is distributed on the perimeter of the club. Golfsmith manufactures and sells both irons and woods of the perimeter-weighted type. Vardon claims that some of Golfsmith's clubs infringe on the '021 and '941 Patents. Golfsmith has moved for summary judgment and in response, Vardon has cross-moved for summary judgment.

On these cross-motions [*4] for summary judgment, several of the '021 patent claims are at issue. Apparently unaware of the exact parameters of Vardon's infringement claim, Golfsmith addressed each claim in the '021 patent. In response and in its own request for summary judgment, Vardon claimed that only two golf clubs, the Penick and Jetstream clubs, literally infringed only Claims 3 and 7. Additionally, Vardon maintains that these clubs also infringe Claims 4, 5, 9, 11, 12, and 14 under the doctrine of equivalents. Each of these claims is discussed below.

Golfsmith's also assumed that Vardon was pursuing infringement claims against many of its clubs and on nearly all the claims contained in the '941 Patent. In its response/cross motion, Vardon conceded that with respect to the clubs discussed in Golfsmith's motion, it was not seeking judgment for infringement on claims 1 through 11 of the '941 Patent. Further, Vardon has not addressed the applicability of any other clubs sold or manufactured by Golfsmith in its cross motion. Therefore, this Court's opinion only addresses Claims 12

through 18 as they apply to the clubs that Golfsmith has addressed in its motion.

Discussion

[HN1] The United States Constitution [*5] empowers Congress to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries," U.S. Const. Art. I, § 8, cl. 8. [HN2] Under the current state of patent law, "whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C. § 271(a) (1999). [HN3] Claims for infringement take two forms - both of which have been charged here - literal infringement or infringement under the doctrine of equivalents. See, e.g., *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 606, 94 L. Ed. 1097, 70 S. Ct. 854 and 612 (1950). [HN4] Absent a genuine issue of material fact, the Court will grant summary judgment in favor of an alleged infringer in the context of literal infringement if no reasonable jury could determine that the accused device meets every limitation of the properly construed claims, see, e.g., *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1476 (Fed. Cir. 1998), [*6] and in the context of the doctrine of equivalents if no reasonable jury could determine that a claim limitation is met in the accused device by an equivalent. See *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39 n.8, 137 L. Ed. 2d 146, 117 S. Ct. 1040 (1997).

To resolve Vardon's infringement claims, this Court first must determine what it is that his patent pertains to (i.e., claim construction) and then must compare the patent to the allegedly infringing golf clubs. See, e.g., *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1301-02 (Fed. Cir. 1999). [HN5] Claim construction is purely a matter of law for the Court. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996); see also *Vardon Golf Co. v. Supreme Golf Sales, Inc.*, 1990 U.S. Dist. LEXIS 8996, No. 89 C 2654, 1990 WL 114498 (N.D. Ill. July 20, 1990). [HN6] To construe the claims at issue, the Court looks to intrinsic evidence in the record, including the claim language, the specification language, drawings, and the prosecution history. See, e.g., *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). [*7] Once construed, the Court compares the claim to the allegedly infringing device. [HN7] The infringement inquiry, while not a question of law, can be resolved on summary judgment in appropriate cases, See Fed. R. Civ. P. 56(e).

Part I - U.S. Patent No. 5,401,021

Construction of Claim 3

The "claim phrase" or "limitation" upon which both Vardon and Golfsmith focus with respect to Claim 3 reads as follows:

means for enlarging the ball striking face to the above value without increasing head weight including a ball striking reinforcing network in the rear cavity of the club head defined by the perimeter wall.

Col. 9, lines 60-64. [HN8] A claim phrase that uses the word "means," presumptively invokes the sixth paragraph of 35 U.S.C. § 112 ("Paragraph Six"), see *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1302 (Fed. Cir. 1999), which guides claim interpretation. See [HN9] 35 U.S.C. § 112, P 6. Paragraph Six provides that "an element in a claim or a combination may be expressed as *a means or step for performing a specified function without the recital of structure, material or acts* in support [*8] thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." *Id.* (emphasis added). [HN10] Two things will take a claim out of the plain language of Paragraph Six: first, failure to recite a function that corresponds with the means stated; and second, recitation of sufficient structure, material, or acts to perform the function. As some courts say, in those instances the presumptive applicability of Paragraph Six is overcome. See, e.g., *Rodine*, 174 F.3d at 1302.

Paragraph Six applies in this case because neither of the conditions mentioned above is present. The language of Claim 3 at issue here ties a function ("enlarging the ball striking face to [6 in.<2> for the six iron]") to the word means. Consequently, the presumptive applicability of Paragraph Six is not overcome on this basis. The claim phrase also recites a structure ("a ball striking reinforcing network in the rear cavity of the club head defined by the perimeter wall"), but this structure is described in extremely generic terms. There is nothing "definite" about the structure described simply as a "reinforcing [*9] network," and Vardon has not demonstrated that the phrase has any commonly-understood meaning in the golf-club industry. See *Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1213-14 (Fed. Cir. 1998) (analyzing a claim under Paragraph Six because the structural phrase "lever moving element" did not have a generally understood structural meaning in the relevant art). Thus, Claim 3 is properly construed under Paragraph Six.

Since Paragraph Six applies, Claim 3 covers "the corresponding structure . . . described in the specification

and equivalents thereof." 35 U.S.C. § 112, P 6. The only description of a "reinforcing network" in the entire specification is a "three-element-perimeter weighting" system. See Col. 5, lines 58-59. These three elements are "[1] the horizontal concave bar in the rear cavity, [2] a generally vertical bar also concave intersecting the horizontal bar, and [3] a unit cellular configuration that has a concave configuration similar to that of the cross bars . . . [that have] their minimum depth at the geometric center and [their] maximum depth around the perimeter of the club head," Col. 5, lines 54-62. Additionally, [*10] the same three elements are described in the preferred embodiment as the means for, among other things, increasing the area of the club face. See Col. 7, lines 54-61. Thus, Claim 3 requires this three-element "reinforcing network" or its equivalents.

Comparison of Claim 3 to the Penick and Jetstream Clubs

Golfsmith is entitled to summary judgment with respect to Claim 3 because the Penick clubs do not use the three-element structure disclosed in the '021 specification or an equivalent structure. To literally infringe on the means-plus-function claims of Vardon's patent, Golfsmith's clubs must have an "equivalent" structure and perform the identical function - both the structure and the function equivalents are required. See *Mas-Hamilton Group*, 156 F.3d at 1212. Golfsmith does not argue that its clubs do not perform an identical function (i.e., club face enlargement). Nevertheless, it is still entitled to summary judgment because neither iron has an equivalent structure. *Id.*

The Penick and Jetstream clubs do not have three-element structures. The only element in the cavity of the Penick clubs is an upside down n1 v-shaped mass running most of the length [*11] of the perimeter wall on the sole of the club and a trapezoidal mass along the sole part of the perimeter wall in the Jetstream club. Since these masses do not go through the geometric center of the club face completely across the cavity of the club, it is difficult to characterize them as either "horizontal" or "vertical" bars. There are, however, no other elements intersecting them and there is no unit cellular structure reinforcing the faces. The single element in the cavity of both the Penick and Jetstream clubs, even assuming that they structurally support the club face are not structurally equivalent to the three-element reinforcing network described in Claim 3. For this reason, Golfsmith is entitled to summary judgment on Claim 3 with respect to both literal infringement and infringement under the doctrine of equivalents. *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1535 (Fed. Cir. 1991) [HN11] (where one claim element is completely missing, there is no literal infringement or infringement under the doctrine of equivalents).

n1 All non-relative directional references with respect to the golf clubs assume that the club is resting as it would when a right-handed golfer initially addresses the ball. For those unfamiliar with the mechanics of golf clubs, with golf club in this position, the "hosel" (the portion of the club that connects the shaft to the club head) points towards the golfer's chin, the "toe" of the club is the portion furthest from the golfer's feet and the "heel" is closest to the golfer's feet, and the "sole" rests flat on the ground.

[*12]

Construction of Claim 7

The limitations upon which both Vardon and Golfsmith focus with respect to Claim 7 read as follows:

[a] means to reinforce the face wall and enlarge the effective hitting area of the golf club

Col. 10, lines 54-56. As noted above, the use of the word "means" presumptively invokes Paragraph Six and the means-plus-function interpretive analysis. In this claim, as in Claim 3, the language of the claim ties a function ("to reinforce the face wall and enlarge the effective hitting area of the golf club") to the word means. Consequently, the presumption of applying Paragraph Six is not overcome on this basis. The claim phrase also recites a structure, which unlike Claim 3 is very specific. The structure is described as:

[1] *an integral perimeter wall* extending rearwardly from and *surrounding* the face wall defining a cavity in the rear of the head, and

[2] *a progressive face wall reinforcing element* in the cavity extending from the approximate center of the rear of the face wall outwardly in the cavity to the perimeter wall, said element being integral with both the face wall and the perimeter wall, said reinforcing [*13] element incrementally increasing in height from the approximate center of the rear of the face wall to the perimeter wall,

[3] whereby the club face is supported by *at least one structural arch*. n2

Col. 10, lines 56-68 (emphasis added). This structure is sufficiently detailed to take interpretation outside of the

language of Paragraph Six. See, e.g., *Cole v. Kimberly Clark Corp.*, 102 F.3d 524, 527 (Fed. Cir. 1997). Since the structure described is sufficiently detailed, it is not necessary to also link the means to a structure described in the patent specification or its equivalents. *Id.* Claim construction here focuses on the language itself.

n2 As described below, the second and third elements are actually the same. This memorandum opinion refers to them separately to parallel the arguments as presented by the parties.

Properly construed, Claim 7 requires a wall extending back from and surrounding the perimeter of the club face. Two dictionary definitions are instructive. [*14] The word "surround" has been defined as follows: "1. To inclose on all sides; to encompass; to environ. 2. To lie or be on all sides of; to encircle; as, a wall surrounds the city." Webster's Revised Unabridged Dictionary (cited from: www.dictionary.com/cgi-bin/dict.pl?term=surround) (visited May 31, 2000). Similarly, another dictionary defines the verb surround as follows: "1. To extend on all sides of simultaneously; encircle. 2. To enclose or confine on all sides so as to bar escape or outside communication." American Heritage Dictionary of the English Language (3d Ed. 1996). Both of these definitions suggest that surround is an all-or-nothing proposition. While the phrase "completely surround" has been used without being self-consciously redundant, see, e.g., *In re Ogiue*, 517 F.2d 1382, 1389 (C.C.P.A. 1975) and the term "partially surround" has been used without being self-consciously oxymoronic, see, e.g., *In re Erickson*, 53 C.C.P.A. 706, 351 F.2d 661, 663 (C.C.P.A. 1965), the unmodified word "surround" or "surrounding" suggests that the wall must completely encircle the perimeter of the club face. This construction is also buttressed by language [*15] elsewhere in the '021 Patent. See Col. 7, lines 19-21 (describing a perimeter wall that extends "completely there-around [the club face]"). Properly construed, Claim 7 requires a wall that goes completely around the rear cavity of the club head.

Claim 7 also describes both "*a progressive face wall reinforcing element*" and "*at least one structural arch*." Col. 10, lines 59-60, 67-8 (emphasis supplied). Whereas Claim 7 describes only a singular progressive face wall element, it seems also to require "at least one" structural arch. Although this number disagreement suggests two separate claim limitations, more than one arch could combine to make a single "element." Additionally, the reinforcing element and structural arch requirements are tied not by a conjunction, but by the word "whereby." This also suggests that the progressive face wall element is further described as - not in addition to - a structural

arch or set of arches. See *Texas Instruments, Inc. v. U.S. ITC*, 988 F.2d 1165, 1171-72 (Fed. Cir. 1993) ("the Commission correctly determined that the 'whereby . . . ' clauses do not contain any limitations not inherent to the process found in [the] [*16] claims"). The description of the progressive face wall element confirms this reading. That element, which is integral with the face wall and the perimeter wall, is at its minimum height near the geometric center of the club and increases in height as it nears the perimeter wall, describes an arch or group of arches.

Although the element height must increase as it moves away from the geometric center and towards the perimeter wall, the rate of increase is not dictated in the claim. Thus the arch could be, for example, curved or flat. See, e.g., *The American Heritage Dictionary* 124, (2d Ed. 1982). Further, nothing in the language of Claim 7 requires the structural arch to span the entire cavity in the rear of the club. On the contrary, the claim language describes an arch or arches that are shortest at or near the geometric center of the club and increase in height as the arch moves towards the perimeter wall.

Comparison of Claim 7 to the Penick and Jetstream Clubs

Both the Penick and Jetstream clubs have an element in the rear cavity of the club. The two elements resemble ramps, the surface of which are shaped roughly like a triangle and a trapezoid respectively. According [*17] to the affidavit provided by Vardon, these ramp elements reinforce the club face. Although Golfsmith says that it disputes this, it has not pointed to any evidence to create a genuine issue of fact. Consequently, the ramps' reinforcing qualities are established as a matter of law,

As noted above, to infringe on Claim 7, these ramps must increase incrementally in height as they move from a point near the geometric center of the club towards the perimeter wall. From the approximate geometric center of the club to all points where the element is integral with the perimeter wall, the ramp increases in thickness incrementally, albeit not uniformly in all directions. But omni-directional uniform increases are not required by Claim 7. Thus, this aspect of Claim 7 is satisfied literally in the Penick and Jetstream clubs.

It is undisputed that the Penick clubs do not have a perimeter wall that completely surrounds the club face. Consequently, the Penick clubs do not literally infringe on Claim 7. See, e.g., *Laitram Corp.* 939 F.2d at 1535. Golfsmith's motion for summary judgment in this regard is therefore granted and Vardon's cross-motion is denied. *Id.* Since this limitation [*18] is not literally satisfied in the Penick clubs, Golfsmith is entitled to summary judgment.

With respect to this claim element under the doctrine of equivalents, the Court cannot say as a matter of law whether the perimeter wall of the Penick clubs is equivalent to the perimeter wall described in Claim 7. n3 This is a matter to be determined by the jury. See *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 38-39, 137 L. Ed. 2d 146, 117 S. Ct. 1040 (1997).

n3 Neither Golfsmith nor Vardon discuss the perimeter-wall requirement of Claim 7 with respect to the Jetstream clubs. The Court, therefore, expresses no opinion as to whether this claim phrase is or is not satisfied. For this reason, both Golfsmith's motion and Vardon's cross-motion are denied with respect to the Jetstream clubs' infringement of Claim 7.

Finally, the Court declines Golfsmith's invitation to apply the doctrine of prosecution history estoppel to preclude application of the doctrine of equivalents in this particular [*19] instance. That issue is not properly before this Court since Golfsmith waited until its reply brief to raise the issue. See, e.g., *Marie O. v. Edgar*, 131 F.3d 610, 614 n. 7 (7th Cir.1997); *Acuff v. IBP, Inc.*, 77 F. Supp. 2d 914, 922 (C.D. Ill. 1999). Application of estoppel would be particularly inappropriate here since the doctrine is presumed to apply unless Vardon shows a valid reason for amending the language and precluding estoppel. *Warner-Jenkinson*, 520 U.S. at 33-34. Vardon, however, has not had an opportunity to rebut the presumptive application of estoppel because it did not know that the issue would be raised when it filed its response brief.

Construction of Claims 4, 5, and 14 and Comparison to Golfsmith's Clubs

Golfsmith is entitled to summary judgment on Claims 4, 5, and 14. Each of these claims requires a "plurality of [face wall] n4 reinforcing elements." These claims require that more than one element reinforce the face wall. As Golfsmith has shown, neither the Penick nor the Jetstream clubs have a "plurality" of elements. Each has but a single element. Since this element is completely lacking, Golfsmith is [*20] entitled to summary judgment on these claims for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 798 (Fed. Cir. 1990).

n4 Claim 14 expressly includes the modifier "face wall," which is implied in Claims 4 and 5.

Construction of Claim 9 and Comparison to Golfsmith's Clubs

Golfsmith is also entitled to summary judgment on Claim 9. Claim 9 requires a "unit cellular structure," which is described and shown as a "honeycomb" layout. Neither the Penick nor the Jetstream clubs have anything remotely resembling a honeycomb structure in the rear cavity of the club head. Since this element is completely lacking, Golfsmith is entitled to summary judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickenson*, 922 F.2d at 798.

Construction of Claim 11 and Comparison to Golfsmith's Clubs

Golfsmith is also entitled to summary judgment on Claim 11. Claim 11 requires a face wall of "gradually increasing thickness in all directions from the center to the perimeter of the club." Neither the Penick nor the Jetstream clubs have face walls that increase in thickness in all directions. Since this element is completely lacking, Golfsmith is entitled to summary judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickenson*, 922 F.2d at 798.

Construction of Claim 12 and Comparison to Golfsmith's Clubs

Golfsmith is also entitled to summary judgment on Claim 12. Claim 12 requires a "pair of crossed reinforcing bars" in the rear cavity of the club head. Neither the Penick nor the Jetstream clubs have crossed reinforcing bars. As noted above, these clubs have only one reinforcing element. Since this element is completely lacking, Golfsmith is entitled to summary judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickenson*, 922 F.2d at 798.

Part II - U.S. Patent No. 5,301,941

The primary focus regarding the '941 patent are three limitations found [*22] in Claim 12. Those three limitations are discussed below and their construction and application to the golf clubs at issue resolve the cross motions for summary judgment. Since Claims 13 and 14 depend on Claim 12, if Golfsmith's clubs do not infringe claim 12 then they also do not infringe on the dependent claims. *Wolverine World Wide, Inc. v. Nike, Inc.*, 38 F.3d 1192, 1199 (Fed. Cir. 1994). Also, although Claim 15 does not depend on Claim 12, it has the second and third limitations discussed below related to Claim 12, and, according to Golfsmith impliedly contains the first of Claim 12's three limitations addressed by Golfsmith. Claims 16 and 17 depend on claim 15 and thus have the same limitations. Since Golfsmith does not address any

of the unique limitations under any of these dependent claims or claims containing similar limitations, the Court addresses all of these claims together. For simplicity's sake, the Court refers to these limitations as "Claim 12" limitations.

Construction of Claim 12

Claim 12 has three limitations on which the parties focus. The Court addresses each of these claim phrases in turn. First, claim 12 requires that the golf club inventions [*23] have "a high impact forward wall . . . having a ball impacting face wall with a plurality of generally parallel grooves." Col. 11, lines 14-18 (emphasis added). The context of this claim specifically and of the patent as a whole suggests that the "high impact forward wall" simply has a face, not a "face wall," with many, roughly-parallel grooves on that face. n5 The phrase "face wall" is not used in these other claims as a shorthand for the composite plastic covering wall. Instead, in these other claims, "face wall" generically refers to the ball striking surface, regardless of whether it is metal or plastic.

n5 Literally read, the claim would require a wall that has a wall. This construction does not make sense and thus will not be adopted, see *Baxter Int'l Inc. v. McGaw, Inc.*, 1996 U.S. Dist. LEXIS 1527, No. 95 C 2723, 1996 WL 66139, *7 (N.D. Ill. Feb. 12, 1996) (rejecting claim construction that made "no sense"), despite Golfsmith's reliance on the examiner's reasons for allowance in support of its argument that this language requires two walls. The examiner's reasons, which purport to relate to Claims 1-14 and mention two separate walls, only state that these claims were allowed over the prior art "in part" because of the two-wall system. The two-wall system does not purport, by the examiner's own words, to be the only reason for allowance.

[*24]

Comparing Claims 1 and 12 also illustrates that the latter claim only requires one wall. By contrast to claim 12, Claim 1 requires two distinct walls - one metal and one plastic wall - so that the thickness of the metal wall can be reduced without it caving in when the golfer, swinging the club head upwards of 100 mph, hits the golf ball. In a Claim 1 golf club, a face-reinforcing matrix juts forward from the forward wall and second plastic wall provides a smooth covering surface to the matrix of supporting bars. Unlike Claim 1 and other claims in the '941 patent that describe in detail two "walls," see, e.g., Col. 9, lines 21-25, Claim 12 never mentions a separately molded, plastic covering wall. Claim 12 also does not

require a reinforcing matrix of bars jutting out from the forward wall. Instead, as noted in more detail below, it simply requires a forward wall with "substantially uniform thickness," Col. 11, lines 20-21. In short, Claim 12 requires one, not two walls.

The second claim limitation upon which the parties focus is that the forward wall must have a "substantially uniform thickness inside the perimeter wall." This forward wall must be about the same thickness throughout [*25] the face. Although the literal construction of "substantially uniform thickness" excludes some of the preferred embodiments from claims that contain this limitation, it does not exclude these embodiments from every claim in the '941 patent. In fact, the claims that specifically discuss the reinforcing matrix covered by a plastic face wall do not contain the "substantially uniform thickness" limitation. See, e.g., Claim 1, Col. 9, lines 12-25. Exceptionally wide variances in wall thickness cannot be encompassed within this limitation. Such an interpretation would impermissibly allow a drawing to contradict the plain language of the claim and render the phrase nonsensical. See, e.g., *Raleigh v. Tandy Corp.*, 1997 U.S. Dist. LEXIS 22130, *20, No C-95-2332-MHP (N.D. Cal, Jan. 9, 1997) [HN12] ("the specification may help define the terms of the claims, but the claim language is not to be contradicted by the drawings or the description of the preferred embodiments").

The third limitation in Claim 12 upon which the parties focus requires an "extension of the perimeter wall and the forward wall outwardly from the hosel in a direction" away from the sweet spot. This limitation [*26] requires (from the perspective of looking directly at the face of the golf club) the heel portion of the face (in a right-handed club) to extend to the right of an imaginary line that lies along the rightmost edge of the hosel, which connects the club head to the shaft.

Comparison of Golfsmith's Clubs to Claim 12 of the '941 Patent

Although Golfsmith's motion addresses each of the golf clubs mentioned in Vardon's complaint, Vardon has conceded that the only clubs at issue for the '941 patent on its response to/cross-motion for summary judgment are: (1) the Killer Bee II Ti XLD-1; (2) the Killer Bee II Ti XLD-2 n6; (3) the Bi-Metallic Woods; and (4) the XTR-II Driver. Vardon concedes that certain other clubs, such as the Killer Bee SS With Offset Hosel and the Killer Bee SS Wood, do not infringe the '941 patent. Additionally, Golfsmith does not address the infringement issue at all with respect to the Cleveland VAS and VAS+ woods, and Karsten's Ping ISI woods.

n6 Although not specifically mentioned in Golfsmith's motion, Vardon concedes that the Killer Bee II Ti XLD-2 golf club is in all material respects identical to the XLD-1 club. The Court addresses the infringement issue as to both clubs together and simply refers to both as "the XLD Clubs."

[*27]

Initially, Golfsmith concedes that each of the clubs in question has "a ball impacting face wall with a plurality of generally parallel grooves." Since, as noted above, the first limitation in Claim 12 does not require two separate walls, this aspect of Claim 12 is satisfied. Moreover, Claim 15 and its other dependent claims, which by Vardon's argument impliedly contain a two-wall limitation, in fact only require a single face wall. Thus, the absence of two walls in the Golfsmith clubs is not fatal to Vardon's infringement claim and does not automatically require summary judgment for Golfsmith.

None of the clubs at issue, however, literally infringe the second (substantially-uniform-thickness) limitation for the ball-striking wall. The XLD Clubs vary in thickness between 3.8 and 4.5mm - the latter thickness being slightly more than 118% the thickness of the former. The BiMetallic clubs vary in thickness between 2.5 and 4.0mm - the latter thickness being slightly more than 160% the thickness of the former. The XTR-II Driver varies in thickness between 2.6 and 4.8mm - the latter thickness being slightly more than 185% the thickness of the former. These variations do not meet the literal [*28] requirement of substantial uniformity. Since this limitation is absent there can be no literal infringement, see, e.g. *Bayer AG v. Elan Pharmaceutical Research Corp.*, 212 F.3d 1241, 2000 WL 572705, *5 (Fed. Cir. 2000), and Golfsmith's motion for summary judgment on these claims is granted.

Drawing inferences in Golfsmith's favor for Vardon's motion and vice versa, however, the Court is unable to say as a matter of law whether a variation of this magnitude is sufficient to satisfy the doctrine of equivalents. The parties devote little time and are essentially two proverbial "passing ships" on the doctrine-of-equivalents issue. n7 As to the doctrine of equivalents, neither party has proved its case as a matter of law and summary judgment is thus inappropriate. Consequently, the motions in this regard are denied.

n7 As but one example of this "two ships" phenomenon, Vardon references an "Exhibit I," which purportedly backs up its argument that "substantially uniform" can encompass thickness variations as great as 30%. Despite an extensive

search through the public court file, the Court was unable to locate the "Exhibit I" to which Vardon thinks it referred (Vardon's attached exhibits "REFERENCED IN: VARDON'S RESPONSE" contain only letters A through H). Vardon's Local Rule 56.1 response to Golfsmith's Local Rule 56.1 statement also refers to the phantom Exhibit I. Although the file is not completely devoid of any Exhibits I (there are, in fact, several), none relate to the "'941 file history excerpt," as Vardon contends.

Expecting this absence to be pointed out by Golfsmith in its reply brief, the Court found that a reply of any kind was completely missing from the document that Golfsmith called its "Reply Brief." Instead, Golfsmith decided to raise for the first time the argument that Vardon had surrendered the '941 patent - not a single word about any of the arguments that Vardon raised. See Discussion *infra* rejecting Golfsmith's attempt to inject a new issue in its "reply" brief.

Since the Court is unable to say that either one of these proverbially passing ships is charting a proper course, both motions for summary judgment are denied under the doctrine of equivalents with respect to all of the clubs.

[*29]

Third, the face-extending-right-of-the-hosel limitation is met by both clubs at issue - the XLD Clubs and the XTR-II Driver. Golfsmith does not argue in its opening brief that this limitation is absent from the Bi-Metallic club n8 or the XTR-II Driver and fails to respond in its "Reply Brief" to Vardon's properly-supported assertion to this effect. Instead, it only argues that "none of three accused Killer Bee clubs have any portion that extends outwardly from the hosel in a direction away from the impact center of the club." The picture of the XLD Club and Dillis Allen's uncontested declaration, however, show that a portion of both of these clubs satisfy this claim limitation. Since the second limitation is absent from all clubs, though, Golfsmith is entitled to summary judgment on claims 12 through 17, all of which contain this limitation.

n8 Vardon also does not assert in its cross-motion that this limitation is satisfied by the Bi-Metallic club. The cross-motions for summary judgment as to the Bi-Metallic clubs are therefore denied. Neither party has sustained its burden with respect to infringement or non-infringement.

[*30]

Vardon's Surrender of the '941 Patent

The Court finally declines Golfsmith's invitation to grant summary judgment because Vardon has surrendered the '941 patent and awaits a reissue. As a purely procedural matter, this argument was not raised until the reply brief and must, therefore be rejected. See, e.g., *Marie O. v. Edgar*, 131 F.3d 610, 614 n. 7 (7th Cir.1997); *Acuff v. IBP, Inc.*, 77 F. Supp. 2d 914, 922 (C.D. Ill. 1999). As a matter of substance, [HN13] an action on an original patent that has been surrendered for reissue abates, if at all, when the patent is reissued, not when the patentee is awaiting reissue. See 35 U.S.C. § 252. Since Golfsmith's surrender argument is procedurally tardy and substantively premature, the Court denies its request for summary judgment on this ground.

Conclusion

For the foregoing reasons, with respect to the '021 Patent, the Court:

grants Golfsmith's motion with respect to the Penick and Jetstream clubs on Claims 3 through 5 regarding literal infringement and infringement under the doctrine of equivalents;

denies both Golfsmith's motion and Vardon's cross-motion [*31] for the Jetstream clubs on Claim 7 regarding literal infringement and infringement under the doctrine of equivalents;

grants Golfsmith's motion for the Penick clubs on Claim 7 regarding literal infringement;

denies Golfsmith's motion and Vardon's cross-motion for the Penick clubs on Claim 7 regarding the doctrine of equivalents; and

grants Golfsmith's motion with respect to the Penick and Jetstream clubs on Claims 9, 11, 12, and 14 regarding literal infringement and infringement under the doctrine of equivalents.

With respect to the '941 Patent, the Court grants Golfsmith's motion for summary judgment with regard to literal infringement of Claims 12 through 18. All motions for summary judgment with regard to the doctrine of equivalents are denied as are Vardon's cross-motions for summary judgment.

Enter:

David H. Coar
United States District Judge

Dated: JUN 6 2000

Vardon Golf Co. v. Karsten Mfg. Corp.

01-1557, 01-1651

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

294 F.3d 1330; 2002 U.S. App. LEXIS 12353; 63 U.S.P.Q.2D (BNA) 1468

June 21, 2002, Decided

PRIOR HISTORY:

[**1] Appealed from: United States District Court for the Northern District of Illinois. Judge Charles P. Kocoras.

DISPOSITION:

Affirmed in part, reversed in part, and remanded.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff patentee appealed the order of the United States District Court for the Northern District of Illinois denying its motion to amend its patent infringement complaint against defendant manufacturer, and dismissing the patentee's suit in its entirety. The manufacturer cross-appealed, arguing that the court abused its discretion when it declined to sanction the patentee for bad faith litigation.

OVERVIEW: In a prior suit for infringement of the patentee's golf club patents, the district court granted partial summary judgment that there was no infringement under one of the patents, but denied summary judgment on the (still pending) claims under the other patent. Prior to the instant suit, the patentee obtained a reissue patent, under which the instant suit was brought. In doing so, it surrendered the parent patent, thereby mooting the prior's suit's summary judgment and extinguishing the patentee's right to appeal the summary judgment on the prior patent. In the instant suit, the patentee moved to amend its answer to allege infringement of additional patent claims. The manufacturer argued, and the district court held, that the patentee was collaterally estopped from bringing the amended complaint's claims. The court of appeals disagreed, holding that the grant of partial summary judgment in the prior suit was not final for purposes of collateral estoppel and that the district court in the instant case therefore erred when it accorded the

decision preclusive effect. The grant of summary judgment clearly was not immune to reversal or amendment. Refusal to sanction the patentee was proper.

OUTCOME: The court of appeals reversed the district court's dismissal of both the patentee's complaint and its motion to amend, affirmed the district court's refusal to impose sanctions on the patentee, and remanded for further proceedings.

COUNSEL:

Michael P. Mazza, Niro, Scacone, Haller & Niro, of Chicago, Illinois, argued for plaintiff-appellant. With him on the brief was Keith A. Vogt.

Lawrence G. Kurland, Bryan Cave LLP, of New York, New York, argued for defendant-cross appellant. With him on the brief were Thomas C. Walsh, David A. Roodman, Roxana Wizorek, and K. Lee Marshall, of Bryan Cave LLP, of St. Louis, Missouri; and Troy B. Froderman, Bryan Cave LLP, of Phoenix, Arizona.

JUDGES:

Before NEWMAN, DYK, and PROST, Circuit Judges. Opinion for the court filed by Circuit Judge PROST. Concurring opinion filed by Circuit Judge DYK.

OPINIONBY:

PROST

OPINION:

[*1331] PROST, Circuit Judge.

Vardon Golf Company, Inc. ("Vardon") appeals from the final decision of the United States District Court for the Northern District of Illinois, denying Vardon's motion to amend its complaint against Karsten

Manufacturing Corporation ("Karsten") and dismissing Vardon's suit in its entirety. *Vardon Golf Co. v. Karsten Mfg. Corp.*, No. 00 C 7221, slip op. at 1 (N.D. Ill. May 9, 2001). The [**2] court held that a grant of partial summary judgment that Karsten did not infringe claims 12 and 15 of Vardon's U.S. Patent No. 5,301,941 ("the '941 patent") in a prior case, *Vardon Golf Co., Inc. v. Karsten Mfg. Corp.*, 2000 U.S. Dist. LEXIS 13769, No. 99 C 2785, slip op. at 1 (N.D. Ill. Sept. 7, 2000) ("Vardon I"), collaterally estopped Vardon from bringing a new action against Karsten based on certain claims of Vardon's reissue patent, U.S. Patent No. Re. 36,950 ("the '950 patent"). *Vardon Golf Co. v. Karsten Mfg. Corp.*, No. 00 C 7221, slip op. at 5 (N.D. Ill. May 9, 2001) ("Vardon II"). Karsten cross-appeals, arguing that the court abused its discretion when it declined to sanction Vardon for bad faith litigation. *Vardon Golf Co., Inc. v. Karsten Mfg. Corp.*, 2001 U.S. Dist. LEXIS 23318, No. 00 C 7221, slip op. at 5 (N.D. Ill. Sept. 20, 2001) ("Vardon II Sanctions"). We hold that the grant of partial summary judgment in Vardon I was not final for purposes of collateral estoppel and that the court therefore erred in according it preclusive effect in Vardon II. We reverse the court's dismissal of both Vardon's complaint and its motion to amend, and remand for further proceedings consistent with this opinion. [**3] We affirm the court's refusal to impose sanctions.

[*1332] BACKGROUND

Vardon and Karsten manufacture golf clubs. Vardon I, 2000 U.S. Dist. LEXIS 13769, [slip op.] at 1. In 1999, Vardon brought suit against Karsten alleging that Karsten's TiSI woods infringed claims 12 and 15 of Vardon's '941 patent and that Karsten's ISI iron-type clubs infringed several claims of Vardon's U.S. Patent No. 5,401,021 ("the '021 patent"). 2000 U.S. Dist. LEXIS 13769, [slip op.] Id. at 1. Claims 12 and 15 of the '941 patent both contain the limitation "substantially uniform thickness." 2000 U.S. Dist. LEXIS 13769, [slip op.] Id. at 15-16. On September 7, 2000, the district court construed this limitation and held that as a matter of law, Karsten's clubs did not infringe claims 12 and 15 either literally or under the doctrine of equivalents. 2000 U.S. Dist. LEXIS 13769, [slip op.] Id. at 17-19. The court consequently granted summary judgment in Karsten's favor on the '941 patent. Id. It denied, however, Karsten's motion for summary judgment on certain of the '021 claims. Id. Thus, Vardon I is still before the court awaiting trial on the '021 patent. That case is not before us on appeal.

Prior to bringing suit against Karsten, Vardon had filed a reissue application for the '941 patent. While that application was pending, but before the court's [**4] decision in Vardon I, Vardon filed a motion to substitute the reissue patent for the '941 patent in the ongoing

litigation. The court denied the motion. Two months after the court granted partial summary judgment in Karsten's favor, the '950 reissue patent issued. In order to obtain the reissue, Vardon surrendered the parent patent, thereby mooting Vardon I's summary judgment on the '941 claims and extinguishing Vardon's right to appeal the court's claim construction and finding of noninfringement regarding that patent. Vardon subsequently filed a second action against Karsten on November 15, 2000. Vardon II at 2. Like Vardon I, Vardon II was brought in the Northern District of Illinois, although the two suits were heard by different district judges.

In Vardon II, Vardon alleged that Karsten infringed claim 22 of the '950 reissue patent. Id. Unlike claims 12 and 15 of the '941 patent, claim 22 of the '950 reissue did not contain the "substantially uniform thickness" limitation that the court had previously construed in Vardon I. Id. After Karsten answered, however, Vardon sought to amend its complaint to include allegations that Karsten's product [**5] infringed claims 12 through 21 of the '950 patent, all of which contain the "substantially uniform thickness" limitation. Id. at 2-3. Karsten challenged this motion, arguing that Vardon was collaterally estopped from raising claims that included a limitation that Karsten's clubs had already been found not to possess. Id. at 3.

The court agreed with Karsten and denied Vardon's motion. Id. at 5. The court held that Vardon had failed to take advantage of available means of preserving its right to appeal in connection with the Vardon I litigation, and that Vardon was therefore estopped from rearguing the Vardon I issues. Id. When Vardon later informed the court that the Patent and Trademark Office ("PTO") had made a mistake printing claim 22 and that, like claims 12 through 21, it too should have contained the "substantially uniform thickness" language, the court dismissed Vardon's entire complaint on the basis of collateral estoppel. Id. at 1. The court denied Karsten's motion for sanctions, however, concluding that Karsten had failed to introduce sufficient evidence to support a finding of bad faith litigation on Vardon's part. Vardon II Sanctions at [**6] 5.

Vardon subsequently filed another motion with the Vardon I court to substitute the '950 patent into its grant of partial summary judgment. This motion was denied. Vardon appealed the Vardon II decision [*1333] to this court, and we have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1).

DISCUSSION

"Because the application of collateral estoppel is not a matter within the exclusive jurisdiction of this court, this court applies the law of the circuit in which the

district court sits." *Bayer AG v. Biovail Corp.*, 279 F.3d 1340, 1345, 61 USPQ2d 1675, 1679 (Fed. Cir. 2002) (citing *Pharmacia & Upjohn Co. v. Mylan Pharms., Inc.*, 170 F.3d 1373, 1381 n.4, 50 USPQ2d 1033, 1040 n.4 (Fed. Cir. 1999)). Under Seventh Circuit law, collateral estoppel, or issue preclusion, prevents a party from litigating an issue if: (1) the issue sought to be precluded is the same as that involved in an earlier action; (2) the issue was actually litigated; (3) determination of the issue was essential to a final judgment; and (4) the party against whom estoppel is invoked was represented in the prior action. See *Adair v. Sherman*, 230 F.3d 890, 893 (7th Cir. 2000); [**7] *Chicago Truck Drivers, Helpers & Warehouse Union (Indep.) Pension Fund v. Century Motor Freight, Inc.*, 125 F.3d 526, 530 (7th Cir. 1997); *Havoco of Am., Ltd. v. Freeman, Atkins & Coleman, Ltd.*, 58 F.3d 303, 307 (7th Cir. 1995).

A.

On appeal, Vardon argues that the Vardon II court erred when it accorded Vardon I preclusive effect because that decision was neither final nor appealable. According to Vardon, a nonfinal, unappealable judgment does not become preclusive simply because a party theoretically could have preserved its right to appeal by pursuing certain procedural avenues. In response, Karsten concedes that Vardon I's grant of partial summary judgment was not sufficiently final to be appealed. It argues, however, that the decision should be accorded preclusive effect because Vardon voluntarily relinquished its right to appeal. In short, Karsten asserts that because Vardon did not take procedural steps to preserve its appeal from Vardon I's partial summary judgment, that judgment now precludes Vardon from litigating the matter anew. In making this argument, Karsten relies heavily on the Seventh Circuit's statement in *Williams v. Commissioner of Internal Revenue*, 1 F.3d 502, 504 (7th Cir. 1993) [**8] that application of collateral estoppel "might be extended to certain cases of summary judgment and even of partial summary judgment." n1

n1 Karsten also argues that the issue of finality is not properly before the court because Vardon failed to raise it in its opening brief. This statement is not accurate. In its brief, Vardon asserts that Vardon I lacks preclusive effect because it is not final, and Karsten's argument is consequently without merit.

We agree with Vardon that Vardon I's grant of partial summary judgment was not final for purposes of collateral estoppel and that the Vardon II court therefore

erred when it accorded the decision preclusive effect. In *Miller Brewing Co. v. Jos. Schlitz Brewing Co.*, 605 F.2d 990 (7th Cir. 1979), the Seventh Circuit set forth the requirements for finality under the doctrine of collateral estoppel. The court held that in order "to be 'final' for purposes of collateral estoppel the decision need only be immune, as a practical matter, to reversal [**9] or amendment." *Id.* at 996. According to the court, the possibility of appeal contributes directly to this determination of finality, which "turns upon such factors as the nature of the decision (i.e., that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review." *Id.* (emphasis added) (citing *Lummus Co. v. Commonwealth Oil Refining Co.*, 297 F.2d 80, 89 [*1334] (2d Cir. 1961)). In so holding, the Seventh Circuit explicitly adopted the approach followed by the Restatement (Second) of Judgments, § 41 reporter's note comment g (Tent. Draft No. 1, 1973), now § 13 reporter's note comment g (1982), which states that the fact "that the decision was subject to appeal or was in fact reviewed on appeal [is a] factor supporting the conclusion that the decision is final for the purpose of preclusion." *Id.* See also *United States v. Sherman*, 912 F.2d 907, 909-10 (7th Cir. 1990); *Gildorn Sav. Asso. v. Commerce Sav. Asso.*, 804 F.2d 390, 393 (7th Cir. 1997); accord *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1135, 227 USPQ 543, 545 (Fed. Cir. 1985) ("Sufficient firmness, [**10] according to the Restatement, requires that the party against whom the estoppel is asserted have had the right, even if not exercised, to challenge on appeal the correctness of the earlier decision.").

In the instant case, Vardon I's grant of summary judgment clearly was not "immune ... to reversal or amendment." Neither party moved to certify the court's interlocutory decision as final under Rule 54(b), and consequently that decision was "subject to revision at any time before the entry of judgment adjudicating all the claims," namely resolution of the remaining '021 patent allegations. Fed. R. Civ. Pro. 54(b). Moreover, Vardon never had the opportunity to appeal Vardon I's construction of the "substantially uniform thickness" limitation or its finding that Karsten's product did not contain this element of the '941 patent either literally or under the doctrine of equivalents. Indeed, Karsten concedes that Vardon I's partial summary judgment was not an appealable final judgment under 28 U.S.C. § 1291, and it is undisputed that this decision was rendered moot, and therefore unappealable, when Vardon surrendered the '941 patent. Under these circumstances, [**11] Vardon I cannot be said to be "final" for collateral estoppel purposes as that term is defined either by the Seventh Circuit or the Restatement.

Karsten urges this court to find otherwise, however, on the ground that Vardon could theoretically have preserved its right to appeal by availing itself of certain procedural means. According to Karsten, Vardon I should be deemed final and therefore preclusive because Vardon could have avoided mootng the court's grant of partial summary judgment by: (1) moving the Vardon I court to certify its decision for interlocutory appeal under Rule 54(b), (2) substituting the '950 reissue patent for the '941 patent at an appropriate time, or (3) suspending its reissuance proceedings before the PTO. This argument is without merit. As a preliminary matter, it is not at all certain that the Vardon I court would have granted a Rule 54(b) certification motion. Nor is it clear that the court would have allowed Vardon to substitute the '950 reissue patent into the litigation, particularly in light of its denial of Vardon's motions to substitute. The existence of such speculative methods of preserving the right to appeal does not render a [**12] nonfinal judgment preclusive for the purposes of collateral estoppel. Accord *Interconnect Planning Corp.*, 774 F.2d at 1136, 227 USPQ at 545 (Fed. Cir. 1985) (the possibility of interlocutory appeal does not render a decision final under the doctrine of collateral estoppel because "the law of collateral estoppel is not intended to penalize a party for declining to try to take a piecemeal appeal.").

Finally, we find Karsten's reliance on *Williams* unconvincing. Although the *Williams* court observed that "a judgment final in the trial court may have collateral estoppel effect even though the loser has not exhausted his appellate remedies," and noted that "it has been suggested that this rule might be extended to certain cases of [*1335] summary judgment and even of partial summary judgment," the court held that the appellant's collateral estoppel argument was "frivolous." 1 F.3d at 504. As such, its statements about the possible scope of collateral estoppel are dicta. At oral argument, Karsten's counsel could not definitively direct the court to any case that has given collateral estoppel effect to a nonfinal judgment. We decline to do so today.

B.

Vardon [**13] also argues that Vardon I's construction of the claim limitation "substantially uniform thickness" is patently incorrect and urges this court to construe the term *de novo*. Karsten responds that Vardon I is not before this court and that reconstruing the limitation would therefore be improper. We agree with Karsten. As this court stated in *Pharmacia*, 170 F.3d at 1380, 50 USPQ2d at 1039, "our role is limited to reviewing the district court's application of collateral estoppel, not the correctness of the [underlying decision]." It is Vardon II that is on appeal to this court,

not Vardon I, and we therefore do not address the Vardon I court's claim construction.

Finally, on cross-appeal Karsten argues that the Vardon II court abused its discretion when it declined to sanction Vardon for bad faith litigation. Karsten sought such sanctions in the form of attorneys fees under Federal Rule of Civil Procedure 54(d)(2)(E), and the court refused to grant them on the ground that the record did not support a finding of bad faith. Vardon II Sanctions at 5. Because it was neither unreasonable nor clearly erroneous for the district court to deny [**14] Karsten's motion for sanctions, Karsten's argument lacks merit. See *Abrutyn v. Giovanniello*, 15 F.3d 1048, 1050-51, 29 USPQ2d 1615, 1617 (Fed. Cir. 1994) (holding that an abuse of discretion occurs if the decision is clearly unreasonable or is based on erroneous conclusions of law). We therefore affirm.

CONCLUSION

The Vardon II court erred when it concluded that Vardon I's grant of partial summary judgment was final for the purposes of collateral estoppel and accorded that interlocutory decision preclusive effect. This court, therefore, reverses Vardon II's dismissal of Vardon's complaint and its motion to amend and remands for further proceedings consistent with this Opinion. We decline to reach the claim construction issue and affirm the Vardon II court's dismissal of Karsten's motion for sanctions.

COSTS

Each party shall bear its own costs.

AFFIRMED-IN-PART, REVERSED-IN-PART,
AND REMANDED.

CONCURBY:
DYK

CONCUR:

DYK, Circuit Judge, concurring.

I join the majority's opinion because I agree that we are bound by our decision in *Bayer AG v. Biovail Corp.*, 279 F.3d 1340, 61 USPQ2d 1675 (Fed. Cir. 2002), to apply regional circuit [**15] law to *res judicata* and collateral estoppel issues. n2 I have serious [*1336] doubts, however, as to whether that is the correct result.

n2 Footnote 4 of the decision in *Pharmacia & Upjohn Co. v. Mylan Pharmaceuticals, Inc.*, 170 F.3d 1373, 50 USPQ2d 1033 (Fed. Cir. 1999), on which Bayer relied, suggested that we should

apply regional circuit law on some collateral estoppel issues and not on others. See *id.* at 1381 n.4 ("Application of *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 28 L. Ed. 2d 788, 91 S. Ct. 1434 (1971)], being an issue of patent law, is a matter within our exclusive jurisdiction and is hence subject to this court's law. However, because the application of general collateral estoppel principles, such as finality of judgment, is not a matter within the exclusive jurisdiction of this court, we must apply the law of the circuit in which the district court here sits").

Although we apply regional circuit [**16] law to purely procedural issues, we apply Federal Circuit law to non-patent issues where "the disposition of nonpatent-law issues is affected by the special circumstances of the patent law setting in which those issues arise." *Midwest Indus., Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356, 1360, 50 USPQ2d 1672, 1675 (Fed. Cir. 1999) (en banc). Such a relationship has been found to exist in a number of areas. For example on personal jurisdiction questions, we have applied our own law, see *Hildebrand v. Steck Mfg. Co.*, 279 F.3d 1351, 1354, 61 USPQ2d 1696, 1698 (Fed. Cir. 2002). We do so in order to "promote

uniformity in the field of patent law" *Midwest Indus.*, 175 F.3d at 1360, 50 USPQ2d at 1676. Although the recent decision of the Supreme Court in *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 2002 U.S. LEXIS 4022, 122 S. Ct. 1889 (2002) may make that uniformity more elusive, it is still important.

Res judicata and collateral estoppel questions are affected by and closely related to patent law questions. Moreover, they may be outcome determinative. In this particular case, it is unlikely that [**17] there is a variation in the collateral estoppel rules in the various regional circuits. But it is not difficult to imagine other cases in which different *res judicata* and collateral estoppel rules would be applied depending on the regional circuit forum, and that the existence of these different rules could affect forum selection. Patent litigants often have a wide choice of fora. There is simply no reason why an earlier patent judgment should have one consequence in the Third Circuit and another in the Seventh Circuit, for example. Such an approach encourages the very forum shopping that our regional circuit law approach was designed to prevent. See *Midwest Indus.*, 175 F.3d at 1359, 50 USPQ2d at 1675.

I would apply uniform Federal Circuit law to determine the effect of previous patent litigation.

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Vardon Golf Co. v. Karsten Mfg. Corp.

00 C 7221

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2001 U.S. Dist. LEXIS 23318

September 20, 2001, Decided

DISPOSITION:

[*1] Defendant's request to recover costs granted and motion for attorney's fees denied. All other pending motions moot.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant manufacturing company was granted summary judgment on plaintiff

golf company's patent infringement claim. The golf company filed another complaint alleging that the manufacturing company infringed claims of the same patent. The court denied her claim on the ground of issue preclusion. The manufacturing company moved to recover taxable costs and attorney's fees from the golf company.

OVERVIEW: The manufacturing company sought to recover costs for deposition transcripts, copies of patents and patent prosecution file histories, and general photocopying. The examination of the owner of the patent-in-suit was necessary to the manufacturing company's intervening rights defense, which the manufacturing company reasonably raised and which the golf company did not challenge when the manufacturing company asked for discovery on it. The cost of the deposition was therefore recoverable. The other deposition-related costs that the manufacturing company requested were also recoverable. Likewise, costs associated with copies of the patent file and general photocopies were taxable. Despite the golf company's objections, those documents were necessary for use in the case the manufacturing company initiated against the golf company. The court did not hold that the golf company acted in bad faith, and therefore it could not grant attorney's fees.

OUTCOME: The manufacturing company's request to recover costs was granted and the motion for attorney's fees was denied. All other pending motions were moot.

COUNSEL:

For VARDON GOLF COMPANY INC, plaintiff:
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For KARSTEN MANUFACTURING CORPORATION,
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For KARSTEN MANUFACTURING CORPORATION,
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For KARSTEN MANUFACTURING CORPORATION,
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For VARDON GOLF COMPANY INC, counter-
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Chicago, IL.

JUDGES:

Charles P. Kocoras, United States District Judge.

OPINIONBY:

Charles P. Kocoras

OPINION:

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

Before the Court are Karsten Manufacturing Company's motions to recover costs and attorney's fees. For the following reasons, we grant the motion to recover costs and deny the motion for attorney's fees.

BACKGROUND

The instant matter is but one in a series of litigations between Plaintiff Vardon Golf Company ("Vardon") and Defendant Karsten Manufacturing Corporation ("Karsten"). In September 2000, our sister court granted Karsten summary judgment of noninfringement of U.S. Patent No. 5,301,941 ("the '941 patent") because the face wall of Karsten's accused golf clubs did not have a "substantially uniform thickness," a limitation required by all of the claims asserted in that case. Soon thereafter, Vardon obtained a reissued patent ("the '950 patent"), but by doing so Vardon extinguished the opportunity to appeal our sister court's opinion.

Vardon turned to this forum for relief, filing in November 2000 a complaint alleging that Karsten [*3] infringed claim 22 of the '950 patent. Claim 22, according to the complaint, did not contain the "substantially uniform thickness" language our sister court had already construed. Several months later, after the parties had completed discovery on Karsten's intervening rights defense, Vardon moved to amend its pleadings to include assertions of claims 12-21 of the '950 patent. All of those claims contained the "substantially uniform thickness" language. Karsten opposed the amendment on the ground of issue preclusion, and this Court agreed. When we delivered that ruling in open Court, Vardon's counsel apprised the Court that claim 22 should have contained the "substantially uniform thickness" language but did not

due to a printing error by the Patent Office. Because claim 22 should have included the language, it fell within the ambit of our ruling and Vardon was estopped from relitigating it in our forum. Vardon later sought an order deeming this ruling final, which we provided.

Karsten now seeks to recover taxable costs from Vardon. It also desires an award of attorney fees. For the following reasons we grant the first request but deny the second.

DISCUSSION

*1. Taxable Costs [*4]*

Rule 54 of the Federal Rules of Civil Procedure provides that costs "shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). Those recoverable costs include: (1) fees of the clerk, (2) fees for transcripts, (3) fees for printing and witnesses, (4) fees for copies of papers necessarily obtained for use in the case, (5) docket fees, and (6) compensation of court-appointed experts and interpreters. See 28 U.S.C. § 1920. As the Seventh Circuit has observed, Rule 54 creates a presumption in favor of the award of costs. See *M.T. Bonk Co. v. Milton Bradley Co.*, 945 F.2d 1404, 1409 (7th Cir. 1991). The presumption is "difficult to overcome," and our discretion is "narrowly confined -- the court must award costs unless it states good reasons for denying them." *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 945 (7th Cir. 1997).

In the case at bar, Karsten seeks to recover costs from Vardon for deposition transcripts, copies of patents and patent prosecution file histories, and general photocopying. With respect to deposition transcripts, Karsten asks for \$ 4,131.35 for [*5] (1) the deposition of Vardon owner and inventor Dillis Allen, (2) Allen's video deposition, and (3) copies of transcripts of Karsten's Rule 30(b)(6) depositions of L. Beacom and M. Trueblood. Vardon contends that section 1920 does not permit recovery of costs associated with video depositions. This position is without merit, as the Seventh Circuit has held that video depositions are allowable costs so long as they are necessary to the litigation. See *Held v. Held*, 137 F.3d 998, 1002 (7th Cir. 1998). Given Allen's position -- the owner of the plaintiff company and the inventor of the patent-in-suit -- his deposition was necessary to the litigation. Vardon protests that Allen's deposition was irrelevant to the collateral estoppel issue that decided this case. While this may be true, it misses the point. In determining whether

to award costs to Karsten as the prevailing party, our concern is not what issue ultimately decided the case. Rather, the statute compels us to decide whether certain costs were necessary to the litigation and are therefore recoverable. In this case, the examination of the owner of the patent-in-suit was necessary to Karsten's intervening rights [*6] defense, which Karsten reasonably raised and which Vardon did not challenge when Karsten asked for discovery on it. The cost of the deposition is therefore recoverable, as are the other deposition-related costs that Karsten desires.

Likewise, costs associated with copies of the patent file and general photocopies are taxable. Despite Vardon's objections, these documents were necessary for use in the case Vardon initiated against Karsten. Vardon claims that some of the requests are duplicative. The two receipts to which Vardon points are not plainly duplicative, however, especially in light of Vardon's concession that the Patent Office's files were incomplete. In light of these difficulties, the copying costs appear neither duplicative nor excessive.

2. Attorney's Fees

Karsten also seeks to recover attorney's fees pursuant to Rule 54(d)(2)(E) as a sanction for what Karsten terms Vardon's "bad faith conduct." The record before the Court does not bear out a claim of bad faith. Vardon first revealed its awareness of the defect in claim 22 in its reply brief of April 26, 2001 to the motion to amend the complaint. During a status hearing of May 9, 2001, Vardon's counsel repeated [*7] the discovery in open court. Although Karsten flings accusations in its briefs about Vardon filing suit on a patent claim it knew was defective, Karsten offers no substantiation of this accusation. Nowhere does Karsten point to evidence probative of Vardon's awareness of the defect at some point prior to the April 26 revelation. Absent any such substantiation, an accusation of bad faith simply cannot stand, and the motion for attorney's fees must be denied.

CONCLUSION

For the foregoing reasons, we grant Karsten's motion to recover costs and deny the motion for attorney's fees.

Charles P. Kocoras

United States District Judge

Dated: September 20, 2001

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Vardon Golf Co. v. Karsten Mfg. Corp.

No. 99 C 2785

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2000 U.S. Dist. LEXIS 13769

September 7, 2000, Decided

September 13, 2000, Docketed

DISPOSITION:

[*1] Karsten's motion for summary judgment
GRANTED IN PART and DENIED IN PART.

CASE SUMMARY

PROCEDURAL POSTURE: In a patent infringement action relating to golf club head design, defendant manufacturer moved for summary judgment.

OVERVIEW: Plaintiff golf club manufacturer owned two patents at issue. One patent was called "Set of Golf Clubs With Enlarged Faces"; the other, "Golf Club With Increased Radius of Gyration and Face Reinforcement". The clubs covered by the patents is of the "cavity back" or "perimeter weighted" style, where the weight of the golf club is not directly behind the place where the golfer ideally wants to hit the ball, but instead, the weight is distributed on the perimeter of the club. Defendant made both irons and woods of the perimeter-weighted type. Plaintiff claimed that defendant's irons and woods infringed on plaintiff's patents. Defendant moved for summary judgment. The court granted and denied defendant's motion in part. The court held inter alia that although defendant disputed whether its clubs perform a function identical to the function performed by plaintiff's clubs (i.e., club face enlargement), summary judgment to defendant on this particular claim was appropriate because defendant's clubs did not have an equivalent structure.

OUTCOME: The court granted and denied defendant's motion in part. Although defendant disputed whether the its golf clubs perform a function identical to the function performed by the clubs in plaintiff's (i.e., club face enlargement), the court granted summary judgment to defendant because its clubs do not have an equivalent structure.

COUNSEL:

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JUDGES:

David H. Coar, United States District Judge.

OPINIONBY:

David H. Coar

OPINION:

MEMORANDUM OPINION AND ORDER

Plaintiff, the Vardon Golf Company, has sued Karsten Manufacturing alleging that it infringed on the inventions protected by U.S. Patent No. 5,401,021 called "Set of Golf Clubs With Enlarged Faces" ("the '021 Patent") and U.S. Patent No. 5,301,941 called "Golf Club With Increased Radius of Gyration and Face Reinforcement" ("the '941 Patent"). Before [*3] this Court are Karsten's motions for summary judgment and Vardon's cross-motions for summary judgment on Claim 3 of the '021 patent.

Background

Vardon owns the rights to two golf-club patents at issue in this case. The '021 Patent concerns "irons" and the '941 concerns "woods." The golf clubs covered by these inventions are of the "cavity back" or "perimeter weighted" style, where the weight of the golf club is not directly behind the place where the golfer ideally wants

to hit the ball (a.k.a. "the sweet spot"), but instead, the weight is distributed on the perimeter of the club. Karsten makes both irons and woods of the perimeter-weighted type. Vardon claims that Karsten's ISI iron-type clubs and the TiSi woods infringe on the '021 and '941 Patents. Karsten has moved for summary judgment and in response, Vardon has cross-moved for summary judgment.

Discussion

The United States Constitution empowers Congress to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. Art. I, § 8, cl. 8. Under the current state of patent law, "whoever without [*4] authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C. § 271(a) (1999). Claims for infringement take two forms -- both of which have been charged here -- literal infringement or infringement under the doctrine of equivalents. See, e.g., *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 606, 94 L. Ed. 1097, 70 S. Ct. 854 and 612 (1950). Absent a genuine issue of material fact, the Court will grant summary judgment in favor of an alleged infringer in the context of literal infringement if no reasonable jury could determine that the accused device meets every limitation of the properly construed claims, see, e.g., *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1476 (Fed. Cir. 1998), and in the context of the doctrine of equivalents if no reasonable jury could determine that a claim limitation is met in the accused device by an equivalent. See *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39 n.8, 137 L. Ed. 2d 146, 117 S. Ct. 1040 (1997).

To resolve the summary judgment motions [*5] on Vardon's infringement claims, this Court first must determine what it is that his patent pertains to (i.e., claim construction) and then must compare the patent to the allegedly infringing golf clubs. See, e.g., *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1301-02 (Fed. Cir. 1999). Claim construction is purely a matter of law for the Court. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996); see also *Vardon Golf Co. v. Supreme Golf Sales, Inc.*, 1990 U.S. Dist. LEXIS 8996, No 89 C 2654, 1990 WL 114498 (N.D. Ill. July 20, 1990). To construe the claims at issue, the Court looks to intrinsic evidence in the record, including the claim language, the specification language, drawings, and the prosecution history. See, e.g., *Vitronics Corp. v. Conceptiontronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Once construed, the Court compares the claim to the allegedly infringing

device. The infringement inquiry, while not a question of law, can be resolved on summary judgment in appropriate cases. See Fed. R. Civ. P. 56(e).

Part I - U.S. Patent No. 5,401,021

Construction of Claim 3

This Court has previously construed [*6] parts of Claim 3 in *Vardon v. Golfsmith, et al.*, 2000 U.S. Dist. LEXIS 14259, No. 99 C 2944 (N.D. Ill. June 6, 2000) Mem. Op. and Order at 3-5. n1 The dispositive "claim phrase" or "limitation" with respect to Claim 3 in this case, as in *Vardon v. Golfsmith*, is:

means for enlarging the ball striking face to the above value without increasing head weight including a ball striking reinforcing network in the rear cavity of the club head defined by the perimeter wall.

Col. 9, lines. 60-64 (emphasis added). A claim phrase that uses the word "means," presumptively invokes the sixth paragraph of 35 U.S.C. § 112 ("Paragraph Six"), see *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1302 (Fed. Cir. 1999), which guides claim interpretation. See 35 U.S.C. § 112, P 6. Paragraph Six provides that "an element in a claim or a combination may be expressed as *a means or step for performing a specified function without the recital of structure, material or acts* in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. [*7] " *Id.* (emphasis added). Two things will take a claim out of the plain language of Paragraph Six: first, failure to recite a function that corresponds with the means stated; and second, recitation of sufficient structure, material, or acts to perform the function. As some courts say, in those instances the presumptive applicability of Paragraph Six is overcome. See, e.g., *Rodine*, 174 F.3d at 1302.

n1 The Court has also construed phrases from Claims 4, 5, 7, 9, 11, 12, and 14 of the '021 Patent and phrases from Claims 12-18 of the '941 Patent.

Paragraph Six applies in this case because neither of the conditions mentioned above is present. The language of Claim 3 at issue here ties a function ("enlarging the ball striking face to [6 in.<2> for the six iron]") to the word means. Consequently, the presumptive applicability of Paragraph Six is not overcome on this basis. The claim phrase also recites a structure ("a ball striking reinforcing network in the rear cavity of the club head defined [*8] by the perimeter wall"), but this structure is

described in extremely generic terms. There is nothing "definite" about the structure described simply as a "reinforcing network," and Vardon has not demonstrated that the phrase has any commonly-understood meaning in the golf-club industry. See *Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1213-14 (Fed. Cir. 1998) (analyzing a claim under Paragraph Six because the structural phrase "lever moving element" did not have a generally understood structural meaning in the relevant art). Thus, Claim 3 is properly construed under Paragraph Six.

Since Paragraph Six applies, Claim 3 covers "the corresponding structure ... described in the specification and equivalents thereof." 35 U.S.C. § 112, P 6. The only description of a "reinforcing network" in the entire specification is a "three-element-perimeter weighting" system. See Col. 5, lines 58-59. These three elements are "[1] the horizontal concave bar in the rear cavity, [2] a generally vertical bar also concave intersecting the horizontal bar, and [3] a unit cellular configuration that has a concave configuration similar to that of the [*9] cross bars ... [that have] their minimum depth at the geometric center and [their] maximum depth around the perimeter of the club head." Col. 5, lines 54-62. Additionally, the same three elements are described in the preferred embodiment as the means for, among other things, increasing the area of the club face. See Col. 7, lines 54-61. Thus, Claim 3 requires this three-element "reinforcing network" or its equivalents.

Comparison of Claim 3 to the Ping ISI Clubs

Karsten is entitled to summary judgment with respect to Claim 3 because the ISI clubs do not use the three-element structure disclosed in the '021 specification or an equivalent structure. To literally infringe on the means-plus-function claims of Vardon's patent, Karsten's clubs must have an "equivalent" structure and perform the identical function -- both the structure and the function equivalents are required. See *Mas-Hamilton Group*, 156 F.3d at 1212. Although Karsten disputes whether the ISI clubs perform a function identical to the function performed by the clubs in Vardon's '021 Patent, (i.e., club face enlargement), the Court grants summary judgment to Karsten because the ISI clubs [*10] do not have an equivalent structure. *Id.*

The ISI irons do not have three-element structures. The ISI clubs have several elements in the cavity of the club, however, there is no unit cellular structure reinforcing the club face. For this reason, Karsten is entitled to summary judgment on Claim 3 with respect to both literal infringement and infringement under the doctrine of equivalents. *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1535 (Fed. Cir. 1991) (where one claim element is completely missing, there is no literal

infringement or infringement under the doctrine of equivalents).

Construction of Claim 4

Claim 4 also uses the term "means." As noted above, the use of the word "means" presumptively invokes Paragraph Six and the means-plus-function interpretive analysis. In this claim, as in Claim 3, the language of the claim ties a function ("for increasing the effective hitting area or sweet spot without increasing overall club head weight") to the word means. Consequently, the presumption of applying Paragraph Six is not overcome on this basis.

Claim 4 also recites a structure, but like the structure described in Claim 3 it is not sufficiently specific. [*11] Claim 4 and dependent Claim 5 both require:

a plurality of reinforcing elements integral with the perimeter wall and the cavity bottom wall *extending completely across the cavity*, said elements extending in a direction perpendicular to the bottom wall defined as element thickness, said element thickness being at its minimum value at the hitting area of the face wall and generally progressively increasing in value outwardly to the perimeter wall.

Col. 10, lines 31-38 (emphasis added). While Claim 4 describes many structural elements (e.g., multiple reinforcing elements that jut up in the rear cavity of the club), the phrase "extending completely across the cavity" does not have a commonly understood meaning in the golf-club industry and is not sufficiently specific to take the claim outside of Paragraph Six.

At first blush, this phrase seems fairly straightforward and definite. Consider an analogy between the shape of our country and a golf club. Few would find it controversial, for example, to describe a journey beginning in Northern Maine and ending in Southern California as one "extending completely across" the United States. Such a journey begins and ends at [*12] roughly opposite corners of the country and would likely pass through or near the geographic center of the country. Similarly, a rib that extended from the top corner of the toe of the club to the lower corner of the heel would also likely qualify as extending "completely across the cavity."

n2 The necessity of the term "likely" points up further obfuscating questions. For example, if the Maine-to-California journey meandered down the Appalachian trail to Georgia and then headed due west to California, could it still be

characterized as a journey that "extended completely across" the United States?

Upon closer examination, however, the phrase "extends completely across the cavity" is actually quite vague. Would a journey from Northern Maine to Southern Florida "extend completely across" the United States? What about a journey from Virginia to Arizona? From North Dakota to Louisiana? These are more difficult questions to answer. Add to these journeys the possibility that they might or might not go near or through [*13] north central Kansas (the geographic center of the United States, see U.S. Geographical Survey, Science Challenge Quiz Site, Q & A No. 31 (http://www.usgs.gov/sci_challenge.html)) and the question is even more complicated. To add further confusion to the mix, it is not at all clear that five separate journeys, beginning at various points on the United States border and ending somewhere in central Kansas, could be characterized as journeys that collectively "extend completely across" the United States.

The cavity defined in the rear of perimeter-weighted golf clubs have both somewhat flat and curved side walls. The cavities are, like the borders of the United States, irregularly shaped. As the analogies above make clear, it is insufficient to describe a reinforcing rib or series of ribs that "extend completely across" the rear cavity. Such a description would not inform a person versed in the art of golf-club manufacturing of the structure specified. Ironically, although Claim 4 requires more than Claim 7, its requirements are less definite because of vagueness of the phrase "extends completely across the cavity." This additional requirement obscures the claim rather than making [*14] it more definite.

Since Paragraph Six applies, Claim 4 must be construed to cover the "corresponding structure, material, or acts described in the specification and equivalents thereof." 35 U.S.C. § 116, P 6. The structure described in the '021 Patent "for increasing the effective hitting area or sweet spot without increasing overall club head weight" Col. 10, lines 28-30, is a "three-element-perimeter weighting" system. See Col. 5, lines 58-59. The '021 Patent discloses no other structure for this purpose. These three elements are "[1] the horizontal concave bar in the rear cavity, [2] a generally vertical bar also concave intersecting the horizontal bar, and [3] a unit cellular configuration that has a concave configuration similar to that of the cross bars ... [that have] their minimum depth at the geometric center and [their] maximum depth around the perimeter of the club head." Col. 5, lines 54-62. Additionally, the same three elements are described in the preferred embodiment as

the means for, among other things, increasing the area of the club face. See Col. 7, lines 54-61. Thus, Claim 4 requires this three-element "reinforcing network" [*15] or its equivalents.

Comparison of Claims 4 & 5 to the Ping ISI Clubs

Karsten is entitled to summary judgment for non-infringement with respect to Claim 4 for precisely the same reason that it is entitled to summary judgment on Claim 3. See *infra* Discussion regarding Comparison of Claim 3 to the Ping ISI Clubs. Since Claim 5 depends on Claim 4, Karsten is also entitled to summary judgment for non-infringement on Claim 5. n3

n3 Since the Ping ISI irons do not have the three-element reinforcing structure required by Claims 4 & 5, the Court does not rely on the further limitations of Claim 5 in granting Karsten's motion for summary judgment.

Construction of Claim 7

One of the limitations with respect to Claim 7 reads as follows:

[a] means to reinforce the face wall and enlarge the effective hitting area of the golf club

Col. 10, lines 54-56. As noted above, the use of the word "means" presumptively invokes Paragraph Six and the means-plus-function interpretive analysis. In this [*16] claim, as in Claim 3, the language of the claim ties a function ("to reinforce the face wall and enlarge the effective hitting area of the golf club") to the word means. Consequently, the presumption of applying Paragraph Six is not overcome on this basis.

The claim phrase also recites a structure, which unlike Claim 3 is sufficiently specific. The structure is described as:

[1] *a progressive face wall reinforcing element* in the cavity [a] extending from the approximate center of the rear of the face wall outwardly in the cavity to the perimeter wall, [b] said element being integral with both the face wall and the perimeter wall, [and c] said reinforcing element incrementally increasing in height from the approximate center of the rear of the face wall to the perimeter wall,

[2] whereby the club face is supported by *at least one structural arch*.

Col. 10, lines 56-68 (emphasis, numbers and letters added). This structure is sufficiently detailed to take interpretation outside of the language of Paragraph Six. See, e.g., *Cole v. Kimberly Clark Corp.*, 102 F.3d 524, 527 (Fed. Cir. 1997). Since the structure described is sufficiently [*17] detailed, it is not necessary also to link the means to a structure described in the patent specification or its equivalents. *Id.* Claim construction here focuses on the language itself.

Claim 7 describes both "*a progressive face wall reinforcing element*" and "*at least one structural arch*." Col. 10, lines 59-60, 67-8 (emphasis supplied). Whereas Claim 7 describes only a singular progressive face wall element, it seems also to require "*at least one*" structural arch. Although this number disagreement suggests two separate claim limitations, more than one arch could combine to make a single "element." Additionally, the reinforcing element and structural arch requirements are tied not by a conjunction, but by the word "whereby." This also suggests that the progressive face-wall element is further described as -- not in addition to -- a structural arch or set of arches. See *Texas Instruments, Inc. v. U.S. ITC*, 988 F.2d 1165, 1171-72 (Fed. Cir. 1993) ("the Commission correctly determined that the 'whereby ...' clauses do not contain any limitations not inherent to the process found in [the] claims"). The description of the progressive face wall element confirms [*18] this reading. That element, which is integral with the face wall and the perimeter wall, is at its minimum height near the geometric center of the club and increases in height as it nears the perimeter wall, describes an arch or group of arches.

Although the element/arch height must increase as it moves away from the geometric center and towards the perimeter wall, the rate of increase is not dictated in the claim. Cf. Col. 11, lines 67-68 and Col. 12, lines 1-3 (describing a parabolically arched reinforcing bar). Thus the arch could be, for example, curved or flat. See, e.g., *The American Heritage Dictionary* 124, (2d Ed. 1982) (defining "arch" as "[a] structural device, esp[ecially] of masonry, forming a curved, pointed or *flat* upper edge of an opening ...") (emphasis added). Further, nothing in the language of Claim 7 requires the structural arch to span the entire cavity in the rear of the club. On the contrary, the claim language describes an arch or arches that are shortest at or near the geometric center of the club and increase in height as the arch moves towards the perimeter wall.

Comparison of Claim 7 to the Ping ISI Irons

Karsten is entitled to [*19] summary judgment for literal non-infringement on Claim 7. The Ping ISI irons have many, but not all of the limitations in Claim 7. The

Ping ISI irons have several bars in the rear cavity of the club that reinforce the club face. These bars extend "from the approximate center of the rear of the face wall outwardly in the cavity to the perimeter wall." Col. 10, lines 60-62. The ribs, which together form a "reinforcing element" are also "integral with both the face wall and the perimeter wall." Col. 10, lines 63-64. The only truly disputed claim phrase is whether or not the "element" in the rear cavity of the Ping ISI clubs increases incrementally in height from the approximate center to the perimeter wall or not. An examination of the Ping ISI iron reveals that it does not. Col. 10, lines 66-68.

In support of its non-infringement assertion on this claim phrase, Karsten relies on the opinion of its expert, Professor Emeritus Donald L. Creighton. Professor Creighton concludes that the Ping ISI irons do not infringe on Claim 7 because, among other things, the reinforcing element does not increase in height, "point to point from the approximate center of the rear face wall to the surrounding [*20] perimeter wall." To support his conclusion, Dr. Creighton relies on a blurred, unmeasured, and unlabeled photocopy of a Ping ISI iron. Neither Karsten nor Vardon have provided drawings or measurements revealing the dimensions of the golf club in the drawing. n4 This bald assertion that the ribs do not increase in height, however, is not proper or sufficient support for a motion for summary judgment. The height change of the ribs as they extend towards the perimeter wall is still essentially unknown at this stage of the proceedings.

n4 Although Karsten submits a photocopy of a Ping ISI iron, upon which Professor Creighton purports to rely in concluding that the reinforcing elements do not increase incrementally, this drawing is not labeled or marked in any way. Given the quality of the photocopy and the lack of corresponding measurements, it is an extremely poor substitute for the physical exhibit. It does not, contrary to Karsten's assertions, undisputedly show the lack of this claim element.

The sketches attached and unsworn declaration of James Stade is not relevant on this motion for summary judgment. See Fed. R. Civ. P. 56(e) (permissible forms of support for summary judgment include, among other things, affidavits but not unsworn declarations), cf. 28 U.S.C. 1746 (sworn declarations may be submitted in lieu of an affidavit). Even if Stade had sworn to his declaration, there are still no corresponding measurements in his sketches and Stade himself does not assert that all of the figures are proportionally accurate.

[*21]

Notwithstanding the shortcomings of Professor Creighton's report, Karsten is still entitled to summary judgment for literal non-infringement. The reinforcing element in the rear of the ISI irons consists of not only five linear ribs but also of a ring surrounding a dot. From this ring-and-dot reinforcement, the five ribs extend toward the perimeter wall. The dot appears in the approximate center of the rear cavity. Outside the dot, the element height decreases substantially and then increases again at the ring surrounding the dot. Outside the ring, the reinforcing element again decreases dramatically. From there, the ribs begin. Thus, even despite the lack of evidence regarding the rib height, Karsten is still entitled to summary judgment for literal non-infringement because the reinforcing element as a whole decreases, increases and decreases (and possibly increases again) in height as it extends from the approximate center to the perimeter wall. This does not literally satisfy the language of Claim 7.

The analysis, however, is not as simple under the doctrine of equivalents. No evidence has been presented regarding the doctrine of equivalents on Claim 7. Thus it is inappropriate [*22] at this stage of the proceedings to determine whether the variations in height in reinforcing element in the rear cavity of the Ping ISI club is "equivalent" to the structure set forth in Claim 7. With respect to the doctrine of equivalents, Karsten's motion is denied.

Construction of Claim 8 and Comparison to Karsten's ISI Clubs

Karsten's motion for summary judgment of non-infringement on Claim 8 under the doctrine of equivalents is also denied. n5 Claim 8 depends from Claim 7 and further requires "four weighting elements formed integrally with the forward wall each having a minimum depth near the center of the face wall and a maximum depth at the perimeter wall." The Ping ISI irons have four elements -- indeed these irons have five ribbed "elements" -- in the rear cavity of the club. As with Claim 7, however, it is unclear whether any of them arch or ramp from the center to the perimeter. For this reason, Karsten's motion with respect to Claim 8 is denied under the doctrine of the equivalents.

n5 For the same reasons discussed in terms of Claim 7, Karsten is entitled to summary judgment on its defense of literal non-infringement as to Claim 8.

[*23]

Construction of Claim 12 and Comparison to Karsten's ISI Iron Clubs

Karsten is also entitled to summary judgment on Claim 12. Claim 12 requires "a pair of crossed reinforcing bars" in the rear cavity of the club head. By its very language, Claim 12 requires a pair of bars (i.e., two bars) and requires that the pair cross. The Ping ISI irons have five bars. Also, none of these bars "cross." Instead, each arranged radially around a center ring at approximately equal intervals. None of the bars appear to even touch the ring, let alone touch or cross each other. Since this element is completely lacking, Karsten is entitled to summary judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickinson*, 922 F.2d 792 at 798.

Construction of Claim 14

Claim 14 is in many respects similar to Claim 7. Whereas Claim 7 requires a "progressive face wall reinforcing element," however, Claim 14 requires a "plurality of face wall reinforcing ... elements." Compare Col. 10, lines 59-60 with Col. 12, lines 12-3. Claim 14 does not require the reinforcement to be "progressive." It does, nevertheless, require [*24] that "at least one of the elements incrementally increases in height from the approximate center of the rear of the face wall to the perimeter wall." Col. 12, lines 18-21. Unlike Claim 7, however, the entire "reinforcing element" need not be at its minimum point at the approximate center of the club. And, the entire element need not increase as it moves towards the perimeter wall. Put another way, a golf club described by Claim 14 could have several flat reinforcing elements only one of which "arched" or ramped from a low point near the center toward a high point integral with the perimeter wall.

Comparison of Karsten's ISI Iron Clubs to Claim 14

Karsten is not entitled to summary judgment for non-infringement with respect to Claim 14. Although Claim 14 only requires one element to increase incrementally in height relative to the cavity-bottom wall as it moves from the approximate center to the perimeter wall, as noted above with respect to Claim 7, Karsten has not provided sufficient evidence with respect to the height of any of the ribs. Without such evidence, it is impossible to tell whether any one of the reinforcing ribs "incrementally increases in height from the approximate [*25] center of the rear of the face wall to the perimeter wall." Since Karsten has not properly supported its motion for summary judgment, it is denied. n6

n6 Karsten is not entitled to summary judgment on Claim 15 for the same reasons articulated with respect to Claim 8. See *infra*.

Validity of the '021 Patent

Karsten is not entitled to summary judgment on its invalidity defense. Under the patent statutes, a patent enjoys a presumption of validity, see 35 U.S.C. § 282, which can be overcome only through clear and convincing evidence. See, e.g., *United States Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1563, 41 U.S.P.Q.2D (BNA) 1225, 1232 (Fed.Cir.1997). "When evaluating a motion for summary judgment, the court views the record evidence through the prism of the evidentiary standard of proof that would pertain at a trial on the merits." *Eli Lilly & Co. v. Barr Labs., Inc.*, 222 F.3d 973, 2000 U.S. App. LEXIS 19021, Nos. 99-1262, 99-1303, 99-1263, 99-1264, 2000 WL 1114915, at *4 (Fed. Cir. Aug. 9, 2000) [*26] (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252-53, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)).

The pictures of prior art upon which Karsten relies, however, do not convincingly demonstrate that the '021 Patent is invalid. Karsten trots out and relies on photocopies of two clubs -- Shear-Line and Pro/Tour Spectrum ("Spectrum") irons. Nowhere in its motion for summary judgment on its invalidity defense, however, does Karsten explain the specifications of these clubs. Of particular importance for both Claim 7 and Claim 14 is the "ramping" or "arching" character of reinforcing elements in the rear cavity of the clubs. Karsten, however, does not provide (other than by visual inspection of the photocopies) any means for determining whether the reinforcing elements (assuming the Shear-Line and Spectrum elements do reinforce the club face) increase in height relative to the cavity bottom wall as the element moves from the approximate center to the perimeter wall. Karsten's motion for summary judgment on its defense of invalidity is therefore denied.

Part II - U.S. Patent No. 5,301,941

The primary focus regarding the '941 patent are several limitations found in Claim 12. Those three limitations [*27] are discussed below and their construction and application to the golf clubs at issue resolve Karsten's motion for summary judgment. Although Claim 15 does not depend on Claim 12, it has the second and third limitations discussed below related to Claim 12. Since the absence of a single element from the Ping TiSI club disposes of Karsten's motion, the Court does not construe or rely upon each and every element raised and discussed in the parties' brief. See, e.g., *Wolverine World Wide, Inc. v. Nike, Inc.*, 38 F.3d

1192, 1199 (Fed. Cir. 1994) (the absence of a single claim limitation is dispositive on the question of non-infringement). For simplicity's sake, the Court refers to these limitations as "Claim 12" limitations.

Contrary to Karsten's argument, the golf clubs described in Claim 12 require only one wall. Claim 12 first requires that the golf clubs have "a high impact forward wall ... having a ball impacting face wall with a plurality of generally parallel grooves." Col. 11, lines 14-18 (emphasis added). The context of this claim specifically and of the patent as a whole suggests that the "high impact forward wall" simply has a face, not a "face wall," with [*28] many, roughly-parallel grooves on that face. The phrase "face wall" is not used in these other claims as a shorthand for the composite plastic covering wall. Instead, in these other claims, "face wall" generically refers to the ball striking surface, regardless of whether it is metal or plastic. n7

n7 Another way of looking at it is that the word "wall" is used to mean two different things. First for example, by wall it means an entire structure that divides two rooms. Second, by wall it means the surface of that structure viewed from inside either of these rooms. In any case, it could not require two of the first types of walls.

Read any other way, the claim would require a "wall ... having a ... wall." This construction does not make sense and will not be adopted, see *Baxter Int'l Inc. v. McGaw, Inc.*, 1996 U.S. Dist. LEXIS 1527, No. 95 C 2723, 1996 WL 66139, *7 (N.D. Ill. Feb. 12, 1996) (rejecting claim construction that made "no sense"), despite Karsten's reliance on the examiner's reasons for allowance in support of its argument that this language requires two walls. The examiner's reasons, which purport to relate to Claims 1-14 and mention two separate walls, only state that these claims were allowed over the prior art "in part" because of the two-wall system. The two-wall system does not purport, by the examiner's own words, to be the only reason for allowance.

[*29]

Comparing Claims 1 and 12 also illustrates that the latter claim only requires one wall. By contrast to claim 12, Claim 1 requires two distinct walls -- one metal and one plastic wall -- so that the thickness of the metal wall can be reduced without it caving in when the golfer, swinging the club head upwards of 100 mph, hits the golf ball. In a Claim 1 golf club, a face-reinforcing matrix juts forward from the forward wall and second plastic wall

provides a smooth covering surface to the matrix of supporting bars. Unlike Claim 1 and other claims in the '941 patent that describe in detail two "walls," see, e.g., Col. 9, lines 21-25, Claim 12 never mentions a separately molded, plastic covering wall. Claim 12 also does not require a reinforcing matrix of bars jutting out from the forward wall. Instead, as noted in more detail below, it simply requires a forward wall with "substantially uniform thickness." Col. 11, lines 20-21. In short, Claim 12 requires one, not two walls.

The second claim limitation upon which the parties focus is that the forward wall must have a "substantially uniform thickness inside the perimeter wall." Interpretation of this claim phrase turns on the meaning [*30] of the modifying term "substantially." The term "substantially" does not mean "essentially" or "exactly" but is a relative term which the Court interprets in context. See, e.g., *John Blue Co. v. Dempster Mill Mfg. Co.*, 172 F. Supp. 23, 27 (D. Neb. 1958). In the context of machine-tooled metal, "where tolerances are measured in by a micrometer, 'substantially uniform thickness' ... would call for differentials of no more than perhaps 0.001 [inches]. But in dealing with (say) the topography of mountain ranges, 'substantially uniform' height ... could permit differences of hundreds of feet or more." *O'Hara Mfg. Ltd. v. Eli Lilly*, 1986 U.S. Dist. LEXIS 22546, at *40 n.8, No. 85 C 3979 (N.D. Ill. July 18, 1986). In the production of ice cream, by further contrast, a claim term requiring production temperatures "substantially" in a certain range is still satisfied by temperatures falling a degree or two outside of that range. See *Dippin' Dots v. Mosey*, 1997 U.S. Dist. LEXIS 20896, at *13-14, No. 3:96-CV-1969-X (N.D. Tex. Mar. 31, 1997). Implicit in these contrasting examples is the principle that the function of the thing at issue [*31] is an important consideration in defining this term. See *John Blue Co.*, 172 F. Supp. at 27. Thus, "a thing is substantially the same as another if it performs the substantially the same function in substantially the same way to obtain the same result." *Id.*

The context of the term "substantially" in this case is investment cast metal. It is undisputed on the summary judgment record, that the standard tolerance for investment casting is ± 0.005 inches or $\pm 0.5\%$. n8. Also instructive (present in Claim 12 but absent from Claim 15) is the phrase immediately following the claim phrase "substantially uniform thickness." In Claim 12, the subsequent phrase explains that the purpose of the uniform wall is to "reduce club head weight." Col. 11, lines 21-2. Reduced club head weight allows larger a club face and increases the radius of gyration, which are both focuses of the '941 Patent. This purpose supports the conclusion that substantially uniform in this context

allows thickness deviations at or near the standard commercial tolerance.

n8 Vardon points out that the wall of "substantially uniform thickness" also has "a plurality of generally parallel grooves." The Court reads these two terms to co-exist in Vardon's claims and thus interprets substantial uniformity without regard to the groove depth.

[*32]

Although this construction of "substantially uniform thickness" excludes *some* of the preferred embodiments from claims that contain this limitation, it does not exclude these embodiments from every claim in the '941 patent. In fact, the claims that specifically discuss the reinforcing matrix covered by a plastic face wall do not contain the "substantially uniform thickness" limitation. See, e.g., Claim 1, Col. 9, lines 12-25. Thus, despite some of the drawings, exceptionally wide variances in wall thickness cannot be encompassed within this limitation. Such an interpretation would impermissibly allow a drawing to contradict the plain language of the claim and render the phrase nonsensical. See, e.g., *Raleigh v. Tandy Corp.*, 1997 U.S. Dist. LEXIS 22130, *20, No C-95-2332-MHP (N.D. Cal. Jan. 9, 1997) ("the specification may help define the terms of the claims, but the claim language is not to be contradicted by the drawings or the description of the preferred embodiments").

Comparison of the Ping TiSI Club to Claim 12 of the '941 Patent

Karsten does not contest the fact that each of the clubs in question has "a ball impacting face wall with a plurality [*33] of generally parallel grooves." Instead, it argues that Claim 12 requires two walls. Since, as noted above, the first limitation in Claim 12 does not require two separate walls, this aspect of Claim 12 is satisfied.

The Ping TiSI club, however, does not literally infringe the second (substantially-uniform-thickness) limitation for the ball-striking wall. The Ping TiSI club varies in thickness between 0.1087 inches and 0.0932 inches -- the latter thickness being slightly more than 94% the thickness of the former. This variation does not meet the literal requirement of substantial uniformity. Since this limitation is completely absent, there can be no literal infringement, see, e.g., *Bayer AG v. Elan Pharmaceutical Research Corp.*, 212 F.3d 1241, 2000 WL 572705, *5 (Fed. Cir. 2000). and there can also be no infringement under the doctrine of equivalents, see, e.g., *Laitram Corp.*, 939 F.2d at 1535. Because the Court concludes that this aspect of Claims 12 and 15 is

completely absent from the Ping TiSI golf clubs, the other claim phrases addressed by the parties are not decided here. Karsten's motion for summary judgment on claims 12 and 15 is granted. [*34]

Conclusion

For the foregoing reasons, with respect to the '021 Patent, the Court:

GRANTS Karsten's motion for summary judgment on Claim 3 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 4 and Claim 5 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 7 for non-infringement with respect to literal infringement; but DENIES Karsten's motion for summary judgment on Claim 7 with respect to infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 8 for non-infringement with respect to literal infringement; but DENIES Karsten's motion for summary judgment on Claim 8 with respect to infringement under the doctrine of equivalents;

GRANTS Karsten's motion for summary judgment on Claim 12 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents;

DENIES Karsten's motion for summary judgment on Claim 14 and Claim 15 for [*35] non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents.

DENIES Karsten's motion for summary judgment with respect to its invalidity defense on the '021 Patent.

With respect to the '941 Patent, the Court GRANTS Karsten's motion for summary judgment on Claims 12 and 15 with respect to both literal infringement and infringement under the doctrine of equivalents.

Enter:

David H. Coar

United States District Judge

Dated: SEP - 7 2000

Vardon Golf Co. v. Golfsmith Int'l

No. 98 C 2944

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2000 U.S. Dist. LEXIS 14259

June 6, 2000, Decided

June 8, 2000, Docketed

DISPOSITION:

[*1] With respect to '021 Patent, Goldsmith's motion with respect to the Penick and Jetstream clubs on Claims 3 through 5 infringement/infringements under doctrine of equivalents granted; both Golfsmith's motion and Vardon's cross-motion for Jetstream clubs on Claim 7 regarding literal infringement/infringements under doctrine of equivalents denied; Golfsmith's motion for Penick clubs on Claim 7 granted; Golfsmith's motion and Vardon's cross-motion for Penick clubs on Claim 7 regarding doctrine of equivalents denied; Golfsmith's motion with respect to Penick and Jetstream clubs on Claims 9, 11, 12, and 14 regarding literal infringement/infringement under doctrine of equivalents granted. With respect to '941 Patent, Golfsmith's motion for summary judgment with regard to literal infringement of Claims 12 through 18 granted. All motions for summary judgment with regard to doctrine of equivalents denied as are Vardon's cross-motions for summary judgment.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff and named defendant cross-moved for summary judgment in action alleging named defendant's and others' violation of plaintiff's two golf-club patents.

OVERVIEW: Plaintiff claimed named defendant and others infringed its golf-club patents for both irons and woods of the perimeter-weighted type. With respect to the irons patent, plaintiff claimed two of defendant's golf clubs literally infringed claims 3 and 7, and infringed claims 4, 5, 9, 11, and 14 under the doctrine of

equivalents. The court determined defendant was entitled to summary judgment on claims 3, 4, 5, 14, 9, 11, and 12, because defendant's clubs did not: use the three-element structure disclosed in the patent specification or an equivalent structure, have a "plurality" of face wall reinforcing elements, have a honeycomb structure in the rear cavity of the club head, increase in thickness in all directions, or have cross reinforcing bars. Defendant was entitled to summary judgment with respect to literal infringement of one club because the club did not have a perimeter wall that completely surrounded the club face; however, the court left to the jury the issue of whether the perimeter wall of the club was equivalent to the perimeter wall described in Claim 7 and did not address the perimeter-wall requirement of Claim 7 with respect to the second club.

OUTCOME: Summary judgment denied to plaintiff and granted to defendant regarding woods patent infringement claims. Regarding irons patent infringement claims: summary judgment granted to defendant on claims 3-5, 9, 11, 12, 14, and on claim 7 with respect to literal infringement on one club; denied to plaintiff and defendant on claim 7 with regard to doctrine of equivalents on the same club; and denied to both parties on the other club.

COUNSEL:

For VARDON GOLF CO INC, plaintiff: Thomas G. Scavone, Patrick Francis Solon, Keith A. Vogt, Dean D. Niro, Niro, Scavone, Haller & Niro, Ltd., Chicago, IL.

For GOLFSMITH INTL INC, defendant: Robert Morton Ward, Lewis T. Steadman, Jr., [*2] Michael Ridgeway Hull, Hill & Simpson, Chicago, IL. Willem G. Schuurman, Adam V. Floyd, Arnold, White & Durkee, Austin, TX. Willem G Schuurman, Brian K. Buss, Vinson & Elkins LLP, Austin, TX.

For ORLIMAR GOLF CO, defendant: Robert V. Jambor, Edward M. Keating, Vangelis Economou, Li-Chung Daniel Ho, Dorn, McEachran, Jambor & Keating, Chicago, IL.

For NICKLAUS GOLF EQUIPMENT COMPANY, L.C., defendant: James P. Ryther, Richard Blake Johnston, Piper, Marbury, Rudnick & Wolfe, Chicago, IL. Mary Spaulding Burns, Wilmette, IL.

For UT GOLF, INC., defendant: Joseph R. Marconi, Daniel Charles Murray, Kurt C. Meihof, Johnson & Bell, Ltd., Chicago, IL.

For VARDON GOLF CO INC, counter-defendant: Thomas G. Scavone, Patrick Francis Solon, Keith A. Vogt, Dean D. Niro, Niro, Scavone, Haller & Niro, Ltd., Chicago, IL.

For NICKLAUS GOLF EQUIPMENT COMPANY, L.C., counter-claimant: James P. Ryther, Richard Blake Johnston, Piper, Marbury, Rudnick & Wolfe, Chicago, IL. Mary Spaulding Burns, Wilmette, IL.

JUDGES:

David H. Coar, United States District Judge.

OPINIONBY:

David H. Coar

OPINION:

MEMORANDUM OPINION AND ORDER

Plaintiff, the Vardon Golf Company, has sued Golfsmith International [*3] and a host of other golf club manufacturers and retailers alleging that they infringed on the inventions protected by U.S. Patent No. 5,401,021 called "Set of Golf Clubs With Enlarged Faces" ("the '021 Patent") and U.S. Patent No. 5,301,941 called "Golf Club With Increased Radius of Gyration and Face Reinforcement" ("the '941 Patent"). Before this Court are Golfsmith's motions for summary judgment and Vardon's cross-motions for summary judgment.

Background

Vardon owns the rights to two golf-club patents at issue in this case. The '021 Patent concerns "irons" and the '941 concerns "woods." The golf clubs covered by

these inventions are of the "cavity back" or "perimeter weighted" style, where the weight of the golf club is not directly behind the place where the golfer ideally wants to hit the ball (a.k.a. "the sweet spot"), but instead, the weight is distributed on the perimeter of the club. Golfsmith manufactures and sells both irons and woods of the perimeter-weighted type. Vardon claims that some of Golfsmith's clubs infringe on the '021 and '941 Patents. Golfsmith has moved for summary judgment and in response, Vardon has cross-moved for summary judgment.

On these cross-motions [*4] for summary judgment, several of the '021 patent claims are at issue. Apparently unaware of the exact parameters of Vardon's infringement claim, Golfsmith addressed each claim in the '021 patent. In response and in its own request for summary judgment, Vardon claimed that only two golf clubs, the Penick and Jetstream clubs, literally infringed only Claims 3 and 7. Additionally, Vardon maintains that these clubs also infringe Claims 4, 5, 9, 11, 12, and 14 under the doctrine of equivalents. Each of these claims is discussed below.

Golfsmith's also assumed that Vardon was pursuing infringement claims against many of its clubs and on nearly all the claims contained in the '941 Patent. In its response/cross motion, Vardon conceded that with respect to the clubs discussed in Golfsmith's motion, it was not seeking judgment for infringement on claims 1 through 11 of the '941 Patent. Further, Vardon has not addressed the applicability of any other clubs sold or manufactured by Golfsmith in its cross motion. Therefore, this Court's opinion only addresses Claims 12 through 18 as they apply to the clubs that Golfsmith has addressed in its motion.

Discussion

The United States Constitution [*5] empowers Congress to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries," U.S. Const. Art. I, § 8, cl. 8. Under the current state of patent law, "whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C. § 271(a) (1999). Claims for infringement take two forms - both of which have been charged here - literal infringement or infringement under the doctrine of equivalents. See, e.g., *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 606, 94 L. Ed. 1097, 70 S. Ct. 854 and 612 (1950). Absent a genuine issue of material fact, the Court will grant summary judgment in favor of an alleged infringer in the context of literal

infringement if no reasonable jury could determine that the accused device meets every limitation of the properly construed claims, see, e.g., *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1476 (Fed. Cir. 1998), [*6] and in the context of the doctrine of equivalents if no reasonable jury could determine that a claim limitation is met in the accused device by an equivalent. See *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39 n.8, 137 L. Ed. 2d 146, 117 S. Ct. 1040 (1997).

To resolve Vardon's infringement claims, this Court first must determine what it is that his patent pertains to (i.e., claim construction) and then must compare the patent to the allegedly infringing golf clubs. See, e.g., *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1301-02 (Fed. Cir. 1999). Claim construction is purely a matter of law for the Court. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996); see also *Vardon Golf Co. v. Supreme Golf Sales, Inc.*, 1990 U.S. Dist. LEXIS 8996, No 89 C 2654, 1990 WL 114498 (N.D. Ill. July 20, 1990). To construe the claims at issue, the Court looks to intrinsic evidence in the record, including the claim language, the specification language, drawings, and the prosecution history. See, e.g., *Vitronics Corp. v. Conception, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). [*7] Once construed, the Court compares the claim to the allegedly infringing device. The infringement inquiry, while not a question of law, can be resolved on summary judgment in appropriate cases. See Fed. R. Civ. P. 56(e).

Part I - U.S. Patent No. 5,401,021

Construction of Claim 3

The "claim phrase" or "limitation" upon which both Vardon and Golfsmith focus with respect to Claim 3 reads as follows:

means for enlarging the ball striking face to the above value without increasing head weight including a ball striking reinforcing network in the rear cavity of the club head defined by the perimeter wall.

Col. 9, lines 60-64. A claim phrase that uses the word "means," presumptively invokes the sixth paragraph of 35 U.S.C. § 112 ("Paragraph Six"), see *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1302 (Fed. Cir. 1999), which guides claim interpretation. See 35 U.S.C. § 112, P 6. Paragraph Six provides that "an element in a claim or a combination may be expressed as *a means or step for performing a specified function without the recital of structure, material or acts in support* [*8] thereof, and such claim shall be construed to cover the corresponding structure, material, or acts

described in the specification and equivalents thereof." *Id.* (emphasis added). Two things will take a claim out of the plain language of Paragraph Six: first, failure to recite a function that corresponds with the means stated; and second, recitation of sufficient structure, material, or acts to perform the function. As some courts say, in those instances the presumptive applicability of Paragraph Six is overcome. See, e.g., *Rodime*, 174 F.3d at 1302.

Paragraph Six applies in this case because neither of the conditions mentioned above is present. The language of Claim 3 at issue here ties a function ("enlarging the ball striking face to [6 in.<2> for the six iron]") to the word means. Consequently, the presumptive applicability of Paragraph Six is not overcome on this basis. The claim phrase also recites a structure ("a ball striking reinforcing network in the rear cavity of the club head defined by the perimeter wall"), but this structure is described in extremely generic terms. There is nothing "definite" about the structure described simply as a "reinforcing [*9] network," and Vardon has not demonstrated that the phrase has any commonly-understood meaning in the golf-club industry. See *Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1213-14 (Fed. Cir. 1998) (analyzing a claim under Paragraph Six because the structural phrase "lever moving element" did not have a generally understood structural meaning in the relevant art). Thus, Claim 3 is properly construed under Paragraph Six.

Since Paragraph Six applies, Claim 3 covers "the corresponding structure ... described in the specification and equivalents thereof." 35 U.S.C. § 112, P 6. The only description of a "reinforcing network" in the entire specification is a "three-element-perimeter weighting" system. See Col. 5, lines 58-59. These three elements are "[1] the horizontal concave bar in the rear cavity, [2]-a generally vertical bar also concave intersecting the horizontal bar, and [3] a unit cellular configuration that has a concave configuration similar to that of the cross bars ... [that have] their minimum depth at the geometric center and [their] maximum depth around the perimeter of the club head," Col. 5, lines 54-62. Additionally, [*10] the same three elements are described in the preferred embodiment as the means for, among other things, increasing the area of the club face. See Col. 7, lines 54-61. Thus, Claim 3 requires this three-element "reinforcing network" or its equivalents.

Comparison of Claim 3 to the Penick and Jetstream Clubs

Golfsmith is entitled to summary judgment with respect to Claim 3 because the Penick clubs do not use the three-element structure disclosed in the '021 specification or an equivalent structure. To literally infringe on the means-plus-function claims of Vardon's

patent, Golfsmith's clubs must have an "equivalent" structure and perform the identical function - both the structure and the function equivalents are required. See *Mas-Hamilton Group*, 156 F.3d at 1212. Golfsmith does not argue that its clubs do not perform an identical function (i.e., club face enlargement). Nevertheless, it is still entitled to summary judgment because neither iron has an equivalent structure. *Id.*

The Penick and Jetstream clubs do not have three-element structures. The only element in the cavity of the Penick clubs is an upside down n1 v-shaped mass running most of the length [*11] of the perimeter wall on the sole of the club and a trapezoidal mass along the sole part of the perimeter wall in the Jetstream club. Since these masses do not go through the geometric center of the club face completely across the cavity of the club, it is difficult to characterize them as either "horizontal" or "vertical" bars. There are, however, no other elements intersecting them and there is no unit cellular structure reinforcing the faces. The single element in the cavity of both the Penick and Jetstream clubs, even assuming that they structurally support the club face are not structurally equivalent to the three-element reinforcing network described in Claim 3. For this reason, Golfsmith is entitled to summary judgment on Claim 3 with respect to both literal infringement and infringement under the doctrine of equivalents. *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1535 (Fed. Cir. 1991) (where one claim element is completely missing, there is no literal infringement or infringement under the doctrine of equivalents).

n1 All non-relative directional references with respect to the golf clubs assume that the club is resting as it would when a right-handed golfer initially addresses the ball. For those unfamiliar with the mechanics of golf clubs, with golf club in this position, the "hosel" (the portion of the club that connects the shaft to the club head) points towards the golfer's chin, the "toe" of the club is the portion furthest from the golfer's feet and the "heel" is closest to the golfer's feet, and the "sole" rests flat on the ground.

[*12]

Construction of Claim 7

The limitations upon which both Vardon and Golfsmith focus with respect to Claim 7 read as follows:

[a] means to reinforce the face wall and enlarge the effective hitting area of the golf club

Col. 10, lines 54-56. As noted above, the use of the word "means" presumptively invokes Paragraph Six and the means-plus-function interpretive analysis. In this claim, as in Claim 3, the language of the claim ties a function ("to reinforce the face wall and enlarge the effective hitting area of the golf club") to the word means. Consequently, the presumption of applying Paragraph Six is not overcome on this basis. The claim phrase also recites a structure, which unlike Claim 3 is very specific. The structure is described as:

[1] *an integral perimeter wall* extending rearwardly from and *surrounding* the face wall defining a cavity in the rear of the head, and

[2] *a progressive face wall reinforcing element* in the cavity extending from the approximate center of the rear of the face wall outwardly in the cavity to the perimeter wall, said element being integral with both the face wall and the perimeter wall, said reinforcing [*13] element incrementally increasing in height from the approximate center of the rear of the face wall to the perimeter wall,

[3] whereby the club face is supported by *at least one structural arch*. n2

Col. 10, lines 56-68 (emphasis added). This structure is sufficiently detailed to take interpretation outside of the language of Paragraph Six. See, e.g., *Cole v. Kimberly Clark Corp.*, 102 F.3d 524, 527 (Fed. Cir. 1997). Since the structure described is sufficiently detailed, it is not necessary to also link the means to a structure described in the patent specification or its equivalents. *Id.* Claim construction here focuses on the language itself.

n2 As described below, the second and third elements are actually the same. This memorandum opinion refers to them separately to parallel the arguments as presented by the parties.

Properly construed, Claim 7 requires a wall extending back from and surrounding the perimeter of the club face. Two dictionary definitions are instructive. [*14] The word "surround" has been defined as follows: "1. To inclose on all sides; to encompass; to environ. 2. To lie or be on all sides of; to encircle; as, a wall surrounds the city." Webster's Revised Unabridged Dictionary (cited from: www.dictionary.com/cgi-bin/dict.pl?term=surround) (visited May 31, 2000). Similarly, another dictionary defines the verb surround as follows: "1. To extend on all sides of simultaneously; encircle. 2. To enclose or confine on all sides so as to bar escape or outside communication." American Heritage

Dictionary of the English Language (3d Ed. 1996). Both of these definitions suggest that surround is an all-or-nothing proposition. While the phrase "completely surround" has been used without being self-consciously redundant, see, e.g., *In re Ogiue*, 517 F.2d 1382, 1389 (C.C.P.A. 1975) and the term "partially surround" has been used without being self-consciously oxymoronic, see, e.g., *In re Erickson*, 53 C.C.P.A. 706, 351 F.2d 661, 663 (C.C.P.A. 1965), the unmodified word "surround" or "surrounding" suggests that the wall must completely encircle the perimeter of the club face. This construction is also buttressed by language [*15] elsewhere in the '021 Patent. See Col. 7, lines 19-21 (describing a perimeter wall that extends "completely there-around [the club face]"). Properly construed, Claim 7 requires a wall that goes completely around the rear cavity of the club head.

Claim 7 also describes both "*a progressive face wall reinforcing element*" and "*at least one structural arch*." Col. 10, lines 59-60, 67-8 (emphasis supplied). Whereas Claim 7 describes only a singular progressive face wall element, it seems also to require "at least one" structural arch. Although this number disagreement suggests two separate claim limitations, more than one arch could combine to make a single "element." Additionally, the reinforcing element and structural arch requirements are tied not by a conjunction, but by the word "whereby." This also suggests that the progressive face wall element is further described as - not in addition to - a structural arch or set of arches. See *Texas Instruments, Inc. v. U.S. ITC*, 988 F.2d 1165, 1171-72 (Fed. Cir. 1993) ("the Commission correctly determined that the 'whereby ...' clauses do not contain any limitations not inherent to the process found in [the] [*16] claims"). The description of the progressive face wall element confirms this reading. That element, which is integral with the face wall and the perimeter wall, is at its minimum height near the geometric center of the club and increases in height as it nears the perimeter wall, describes an arch or group of arches.

Although the element height must increase as it moves away from the geometric center and towards the perimeter wall, the rate of increase is not dictated in the claim. Thus the arch could be, for example, curved or flat. See, e.g., *The American Heritage Dictionary* 124, (2d Ed. 1982). Further, nothing in the language of Claim 7 requires the structural arch to span the entire cavity in the rear of the club. On the contrary, the claim language describes an arch or arches that are shortest at or near the geometric center of the club and increase in height as the arch moves towards the perimeter wall.

Comparison of Claim 7 to the Penick and Jetstream Clubs

Both the Penick and Jetstream clubs have an element in the rear cavity of the club. The two elements resemble ramps, the surface of which are shaped roughly like a triangle and a trapezoid respectively. According [*17] to the affidavit provided by Vardon, these ramp elements reinforce the club face. Although Golfsmith says that it disputes this, it has not pointed to any evidence to create a genuine issue of fact. Consequently, the ramps' reinforcing qualities are established as a matter of law.

As noted above, to infringe on Claim 7, these ramps must increase incrementally in height as they move from a point near the geometric center of the club towards the perimeter wall. From the approximate geometric center of the club to all points where the element is integral with the perimeter wall, the ramp increases in thickness incrementally, albeit not uniformly in all directions. But omni-directional uniform increases are not required by Claim 7. Thus, this aspect of Claim 7 is satisfied literally in the Penick and Jetstream clubs.

It is undisputed that the Penick clubs do not have a perimeter wall that completely surrounds the club face. Consequently, the Penick clubs do not literally infringe on Claim 7. See, e.g., *Laitram Corp.* 939 F.2d at 1535. Golfsmith's motion for summary judgment in this regard is therefore granted and Vardon's cross-motion is denied. *Id.* Since this limitation [*18] is not literally satisfied in the Penick clubs, Golfsmith is entitled to summary judgment.

With respect to this claim element under the doctrine of equivalents, the Court cannot say as a matter of law whether the perimeter wall of the Penick clubs is equivalent to the perimeter wall described in Claim 7. n3 This is a matter to be determined by the jury. See *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 38-39, 137 L. Ed. 2d 146, 117 S. Ct. 1040 (1997).

n3 Neither Golfsmith nor Vardon discuss the perimeter-wall requirement of Claim 7 with respect to the Jetstream clubs. The Court, therefore, expresses no opinion as to whether this claim phrase is or is not satisfied. For this reason, both Golfsmith's motion and Vardon's cross-motion are denied with respect to the Jetstream irons' infringement of Claim 7.

Finally, the Court declines Golfsmith's invitation to apply the doctrine of prosecution history estoppel to preclude application of the doctrine of equivalents in this particular [*19] instance. That issue is not properly before this Court since Golfsmith waited until its reply

brief to raise the issue. See, e.g., *Marie O. v. Edgar*, 131 F.3d 610, 614 n. 7 (7th Cir.1997); *Acuff v. IBP, Inc.*, 77 F. Supp. 2d 914, 922 (C.D. Ill. 1999). Application of estoppel would be particularly inappropriate here since the doctrine is presumed to apply unless Vardon shows a valid reason for amending the language and precluding estoppel. *Warner-Jenkinson*, 520 U.S. at 33-34. Vardon, however, has not had an opportunity to rebut the presumptive application of estoppel because it did not know that the issue would be raised when it filed its response brief.

Construction of Claims 4, 5, and 14 and Comparison to Golfsmith's Clubs

Golfsmith is entitled to summary judgment on Claims 4, 5, and 14. Each of these claims requires a "plurality of [face wall] n4 reinforcing elements." These claims require that more than one element reinforce the face wall. As Golfsmith has shown, neither the Penick nor the Jetstream clubs have a "plurality" of elements. Each has but a single element. Since this element is completely lacking, Golfsmith is [*20] entitled to summary judgment on these claims for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 798 (Fed. Cir. 1990).

n4 Claim 14 expressly includes the modifier "face wall," which is implied in Claims 4 and 5.

Construction of Claim 9 and Comparison to Golfsmith's Clubs

Golfsmith is also entitled to summary judgment on Claim 9. Claim 9 requires a "unit cellular structure," which is described and shown as a "honeycomb" layout. Neither the Penick nor the Jetstream clubs have anything remotely resembling a honeycomb structure in the rear cavity of the club head. Since this element is completely lacking, Golfsmith is entitled to summary judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickenson*, 922 F.2d at 798.

Construction of Claim 11 and Comparison to Golfsmith's Clubs

Golfsmith is also entitled to summary [*21] judgment on Claim 11. Claim 11 requires a face wall of "gradually increasing thickness in all directions from the center to the perimeter of the club," Neither the Penick nor the Jetstream clubs have face walls that increase in thickness in all directions. Since this element is completely lacking, Golfsmith is entitled to summary

judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickenson*, 922 F.2d at 798.

Construction of Claim 12 and Comparison to Golfsmith's Clubs

Golfsmith is also entitled to summary judgment on Claim 12. Claim 12 requires a "pair of crossed reinforcing bars" in the rear cavity of the club head. Neither the Penick nor the Jetstream clubs have crossed reinforcing bars. As noted above, these clubs have only one reinforcing element. Since this element is completely lacking, Golfsmith is entitled to summary judgment on this claim for both literal infringement and infringement under the doctrine of equivalents. See *Becton Dickenson*, 922 F.2d at 798.

Part II - U.S. Patent No. 5,301,941

The primary focus regarding the '941 patent are three limitations found [*22] in Claim 12. Those three limitations are discussed below and their construction and application to the golf clubs at issue resolve the cross motions for summary judgment. Since Claims 13 and 14 depend on Claim 12, if Golfsmith's clubs do not infringe claim 12 then they also do not infringe on the dependent claims. *Wolverine World Wide, Inc. v. Nike, Inc.*, 38 F.3d 1192, 1199 (Fed. Cir. 1994). Also, although Claim 15 does not depend on Claim 12, it has the second and third limitations discussed below related to Claim 12, and, according to Golfsmith impliedly contains the first of Claim 12's three limitations addressed by Golfsmith. Claims 16 and 17 depend on claim 15 and thus have the same limitations. Since Golfsmith does not address any of the unique limitations under any of these dependent claims or claims containing similar limitations, the Court addresses all of these claims together. For simplicity's sake, the Court refers to these limitations as "Claim 12" limitations.

Construction of Claim 12

Claim 12 has three limitations on which the parties focus. The Court addresses each of these claim phrases in turn. First, claim 12 requires that the golf club inventions [*23] have "a high impact forward wall ... having a ball impacting face wall with a plurality of generally parallel grooves." Col. 11, lines 14-18 (emphasis added). The context of this claim specifically and of the patent as a whole suggests that the "high impact forward wall" simply has a face, not a "face wall," with many, roughly-parallel grooves on that face. n5 The phrase "face wall" is not used in these other claims as a shorthand for the composite plastic covering wall. Instead, in these other claims, "face wall" generically refers to the ball striking surface, regardless of whether it is metal or plastic.

n5 Literally read, the claim would require a wall that has a wall. This construction does not make sense and thus will not be adopted, see *Baxter Int'l Inc. v. McGaw, Inc.*, 1996 U.S. Dist. LEXIS 1527, No. 95 C 2723, 1996 WL 66139, *7 (N.D. Ill. Feb. 12, 1996) (rejecting claim construction that made "no sense"), despite Golfsmith's reliance on the examiner's reasons for allowance in support of its argument that this language requires two walls. The examiner's reasons, which purport to relate to Claims 1-14 and mention two separate walls, only state that these claims were allowed over the prior art "in part" because of the two-wall system. The two-wall system does not purport, by the examiner's own words, to be the only reason for allowance.

[*24]

Comparing Claims 1 and 12 also illustrates that the latter claim only requires one wall. By contrast to claim 12, Claim 1 requires two distinct walls - one metal and one plastic wall - so that the thickness of the metal wall can be reduced without it caving in when the golfer, swinging the club head upwards of 100 mph, hits the golf ball. In a Claim 1 golf club, a face-reinforcing matrix juts forward from the forward wall and second plastic wall provides a smooth covering surface to the matrix of supporting bars. Unlike Claim 1 and other claims in the '941 patent that describe in detail two "walls," see, e.g., Col. 9, lines 21-25, Claim 12 never mentions a separately molded, plastic covering wall. Claim 12 also does not require a reinforcing matrix of bars jutting out from the forward wall. Instead, as noted in more detail below, it simply requires a forward wall with "substantially uniform thickness," Col. 11, lines 20-21. In short, Claim 12 requires one, not two walls.

The second claim limitation upon which the parties focus is that the forward wall must have a "substantially uniform thickness inside the perimeter wall." This forward wall must be about the same thickness throughout [*25] the face. Although the literal construction of "substantially uniform thickness" excludes some of the preferred embodiments from claims that contain this limitation, it does not exclude these embodiments from every claim in the '941 patent. In fact, the claims that specifically discuss the reinforcing matrix covered by a plastic face wall do not contain the "substantially uniform thickness" limitation. See, e.g., Claim 1, Col. 9, lines 12-25. Exceptionally wide variances in wall thickness cannot be encompassed within this limitation. Such an interpretation would impermissibly allow a drawing to contradict the plain

language of the claim and render the phrase nonsensical. See, e.g., *Raleigh v. Tandy Corp.*, 1997 U.S. Dist. LEXIS 22130, *20, No C-95-2332-MHP (N.D. Cal, Jan. 9, 1997) ("the specification may help define the terms of the claims, but the claim language is not to be contradicted by the drawings or the description of the preferred embodiments").

The third limitation in Claim 12 upon which the parties focus requires an "extension of the perimeter wall and the forward wall outwardly from the hosel in a direction" away from the sweet spot. This limitation [*26] requires (from the perspective of looking directly at the face of the golf club) the heel portion of the face (in a right-handed club) to extend to the right of an imaginary line that lies along the rightmost edge of the hosel, which connects the club head to the shaft.

Comparison of Golfsmith's Clubs to Claim 12 of the '941 Patent

Although Golfsmith's motion addresses each of the golf clubs mentioned in Vardon's complaint, Vardon has conceded that the only clubs at issue for the '941 patent on its response to/cross-motion for summary judgment are: (1) the Killer Bee II Ti XLD-1; (2) the Killer Bee II Ti XLD-2 n6; (3) the Bi-Metallic Woods; and (4) the XTR-II Driver. Vardon concedes that certain other clubs, such as the Killer Bee SS With Offset Hosel and the Killer Bee SS Wood, do not infringe the '941 patent. Additionally, Golfsmith does not address the infringement issue at all with respect to the Cleveland VAS and VAS+ woods, and Karsten's Ping ISI woods.

n6 Although not specifically mentioned in Golfsmith's motion, Vardon concedes that the Killer Bee II Ti XLD-2 golf club is in all material respects identical to the XLD-1 club. The Court addresses the infringement issue as to both clubs together and simply refers to both as "the XLD Clubs."

[*27]

Initially, Golfsmith concedes that each of the clubs in question has "a ball impacting face wall with a plurality of generally parallel grooves." Since, as noted above, the first limitation in Claim 12 does not require two separate walls, this aspect of Claim 12 is satisfied. Moreover, Claim 15 and its other dependent claims, which by Vardon's argument impliedly contain a two-wall limitation, in fact only require a single face wall. Thus, the absence of two walls in the Golfsmith clubs is not fatal to Vardon's infringement claim and does not automatically require summary judgment for Golfsmith.

None of the clubs at issue, however, literally infringe the second (substantially-uniform-thickness) limitation for the ball-striking wall. The XLD Clubs vary in thickness between 3.8 and 4.5mm - the latter thickness being slightly more than 118% the thickness of the former. The BiMetallic clubs vary in thickness between 2.5 and 4.0mm - the latter thickness being slightly more than 160% the thickness of the former. The XTR-II Driver varies in thickness between 2.6 and 4.8mm - the latter thickness being slightly more than 185% the thickness of the former. These variations do not meet the literal [*28] requirement of substantial uniformity. Since this limitation is absent there can be no literal infringement, see, e.g. *Bayer AG v. Elan Pharmaceutical Research Corp.*, 212 F.3d 1241, 2000 WL 572705, *5 (Fed. Cir. 2000), and Golfsmith's motion for summary judgment on these claims is granted.

Drawing inferences in Golfsmith's favor for Vardon's motion and vice versa, however, the Court is unable to say as a matter of law whether a variation of this magnitude is sufficient to satisfy the doctrine of equivalents. The parties devote little time and are essentially two proverbial "passing ships" on the doctrine-of-equivalents issue. n7 As to the doctrine of equivalents, neither party has proved its case as a matter of law and summary judgment is thus inappropriate. Consequently, the motions in this regard are denied.

n7 As but one example of this "two ships" phenomenon, Vardon references an "Exhibit I," which purportedly backs up its argument that "substantially uniform" can encompass thickness variations as great as 30%. Despite an extensive search through the public court file, the Court was unable to locate the "Exhibit I" to which Vardon thinks it referred (Vardon's attached exhibits "REFERENCED IN: VARDON'S RESPONSE" contain only letters A through H). Vardon's Local Rule 56.1 response to Golfsmith's Local Rule 56.1 statement also refers to the phantom Exhibit I. Although the file is not completely devoid of any Exhibits I (there are, in fact, several), none relate to the "'941 file history excerpt," as Vardon contends.

Expecting this absence to be pointed out by Golfsmith in its reply brief, the Court found that a reply of any kind was completely missing from the document that Golfsmith called its "Reply Brief." Instead, Golfsmith decided to raise for the first time the argument that Vardon had surrendered the '941 patent - not a single word about any of the arguments that Vardon raised.

See Discussion *infra* rejecting Golfsmith's attempt to inject a new issue in its "reply" brief.

Since the Court is unable to say that either one of these proverbially passing ships is charting a proper course, both motions for summary judgment are denied under the doctrine of equivalents with respect to all of the clubs.

[*29]

Third, the face-extending-right-of-the-hosel limitation is met by both clubs at issue - the XLD Clubs and the XTR-II Driver. Golfsmith does not argue in its opening brief that this limitation is absent from the Bi-Metallic club n8 or the XTR-II Driver and fails to respond in its "Reply Brief" to Vardon's properly-supported assertion to this effect. Instead, it only argues that "none of three accused Killer Bee clubs have any portion that extends outwardly from the hosel in a direction away from the impact center of the club." The picture of the XLD Club and Dillis Allen's uncontested declaration, however, show that a portion of both of these clubs satisfy this claim limitation. Since the second limitation is absent from all clubs, though, Golfsmith is entitled to summary judgment on claims 12 through 17, all of which contain this limitation.

n8 Vardon also does not assert in its cross-motion that this limitation is satisfied by the Bi-Metallic club. The cross-motions for summary judgment as to the Bi-Metallic clubs are therefore denied. Neither party has sustained its burden with respect to infringement or non-infringement.

[*30]

Vardon's Surrender of the '941 Patent

The Court finally declines Golfsmith's invitation to grant summary judgment because Vardon has surrendered the '941 patent and awaits a reissue. As a purely procedural matter, this argument was not raised until the reply brief and must, therefore be rejected. See, e.g., *Marie O. v. Edgar*, 131 F.3d 610, 614 n. 7 (7th Cir.1997); *Acuff v. IBP, Inc.*, 77 F. Supp. 2d 914, 922 (C.D. Ill. 1999). As a matter of substance, an action on an original patent that has been surrendered for reissue abates, if at all, when the patent is reissued, not when the patentee is awaiting reissue. See 35 U.S.C. § 252. Since Golfsmith's surrender argument is procedurally tardy and substantively premature, the Court denies its request for summary judgment on this ground.

Conclusion

For the foregoing reasons, with respect to the '021 Patent, the Court:

grants Golfsmith's motion with respect to the Penick and Jetstream clubs on Claims 3 through 5 regarding literal infringement and infringement under the doctrine of equivalents;

denies both Golfsmith's motion and Vardon's cross-motion [*31] for the Jetstream clubs on Claim 7 regarding literal infringement and infringement under the doctrine of equivalents;

grants Golfsmith's motion for the Penick clubs on Claim 7 regarding literal infringement;

denies Golfsmith's motion and Vardon's cross-motion for the Penick clubs on Claim 7 regarding the doctrine of equivalents; and

grants Golfsmith's motion with respect to the Penick and Jetstream clubs on Claims 9, 11, 12, and 14 regarding literal infringement and infringement under the doctrine of equivalents.

With respect to the '941 Patent, the Court grants Golfsmith's motion for summary judgment with regard to literal infringement of Claims 12 through 18. All motions for summary judgment with regard to the doctrine of equivalents are denied as are Vardon's cross-motions for summary judgment.

Enter:

David H. Coar

United States District Judge

Dated: JUN 6 2000

Time of Request: April 29, 2004 09:27 AM EDT

Research Information:

° News, All (English, Full Text)
5301941 or 5,301,941

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SECTION: RFC EXPRESS TM; Recently Filed Patent Cases; Pg. 26

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98-1481 -- Filed: 980410
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4,357,703

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News, All (English, Full Text)
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5,750,015-204/454

99-872 -- Filed: 990420

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5,638,711-070/259

99-873 -- Filed: 990420

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5,845,424-040/661.06

99-4781 -- Filed: 990504
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5,057,481-502/208

99-10705 -- Filed: 990331
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5,850,708-047/001.01

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99-1207 -- Filed: 990304
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99-711 -- Filed: 990507
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99-2785 -- Filed: 990427
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99-654 -- Filed: 990428

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99-4145 -- Filed: 990420

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99-100 -- Filed: 990217

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5,459,576-415/173.3

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RANDOLPH-RAND CO. OF NY

vs.

JOHN PARK DBA XO NEW YORK CO. & DOES 1-10

4,453,294-24/303

99-14074 -- Filed:990324

RESPONSE REWARD SYSTEMS LC

vs.

NET ANY SOFTWARE INT'L INC., ET AL

4,520,404-386/54

00-3898 -- Filed:000627

ROVANCO SYSTEMS INC.

vs.

THERMACOR PROCESS INC.

5,736,715-219/535

00-9361 -- Filed:000831

SKECHERS USA INC. II

vs.

MERCURY INC. TRADING CORP. & ROBERT GARBER

423,201-D2/957

00-11285 -- Filed:001027

SKECHERS USA INC. II

vs.

HADDAD APPAREL GROUP LTD., FACTORY 2U STORES INC. & BRAHA IND. INC.

423,201-D2/957

99-5183 -- Filed:991104

STRYKER CORP.

vs.

DEPUY ORTHOPEDICS

4,893,549-92/12.2

00-8201 -- Filed:000731

TEDEA-HUNTLEIGH LTD., ET AL

vs.

PTC ELECTRONICS INC. & SCAIME S.A.

5,232,062-177/187; 5,880,410-177/187

98-5880 -- Filed:980721

ULEAD SYSTEMS INC.

vs.

LEX COMPUTER & MGMT CORP.

4,538,188-386/54

00-2311 -- Filed:000414

UNITED LEISURE INC., ET AL

vs.

BROADRIDGE MEDIA INC., ET AL

5,996,000-709/201

99-2784 -- Filed:990427
VARDON GOLF CO. INC.
vs.
ROSSIGNOL SKI CO. INC., ET AL
5,301,941-473/327; 5,401,021-473/291

00-849 -- Filed:000919
VISX INC.
vs.
BAUSCH & LOMB SURGICAL INC.


00-8766 -- Filed:000126
WELCOME CO. LTD.
vs.
BEST DIRECT LTD. & WILLIAM LEVINE LTD.
5,142,123-219/243

00-3 -- Filed:000104
WHATMAN PLC
vs.
SCHLEICHER & SCHELL
5,807,527-424/488

00-788 -- Filed:001020
WHIRLPOOL CORP.
vs.
MAYTAG CORP.
6,045,203-312/228

99-4145 -- Filed:990420
ZB IND. INC.
vs.
CONAGRA INC. DBA SINGLETON SHRIMP CO. DBA MERIDAN PRODUCTS, ET AL
404,612-D7/505

LOAD-DATE: April 6, 2001

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US District Court Civil Docket

US District Court for the Northern District of Illinois
(Chicago)

1:98cv2944

Vardon Golf Co Inc v. Golfsmith Intl Inc, et al

This case was retrieved from the court on Thursday, April 29, 2004

Date Filed: 05/13/1998
Assigned To: Honorable David H Coar
Referred To:
Nature of suit: Patent (830)
Cause: Patent Infringement
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: ASHMAN
A0279
Closed: No
Statute: 35:183
Jury Demand: Both
Demand
Amount: \$50,000

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Orlimar Golf Co
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Wilson Sporting Goods, Inc
COUNTER-CLAIMANT

v.

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COUNTER-DEFENDANT

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Date	#	Proceeding Text
05/13/1998	<u>1</u>	COMPLAINT (Exhibits); jury demand - Civil cover sheet - Appearance(s) of Thomas G. Scavone, Patrick Francis Solon, Keith A. Vogt and Dean D. Niro as attorney(s) for plaintiff Vardon Golf Co Inc (Six Originals and six copysummons(es) issued.) (Documents: 1-1 through 1-4) [Date Entered: 05/14/98, By: hp]
05/13/1998	=	RECEIPT regarding payment of filing fee paid; on 5/13/98 in the amount of \$150.00, receipt #512524. [Date Entered: 05/14/98, By: hp]
05/13/1998	<u>2</u>	NOTICE of claims involving patents and trademarks pursuant to Local Rule 13 by plaintiff [Date Entered: 05/14/98, By: hp]
05/14/1998	=	MAILED Patent report to Commissioner of Patents and Trademark to Washington, D.C. [Date Entered: 05/14/98, By: hp]
07/14/1998	<u>3</u>	MINUTE ORDER of 7/14/98 by Hon. David H. Coar : Rule 16(b) scheduling conference set for 08/21/98 at 1:30 p.m. in chambers. The court hereby opts into Rule 26(a)(1) for purposes of this case. Proposed discovery plan pursuant to Rule 26(f) and proposed scheduling order pursuant to Rule 16(b) to be filed in chambers. (See reverse of minute order.) (See attached forms for report of planning confrence and proposed scheduling order.) Mailed notice [Date Entered: 07/16/98, By: hp]
07/17/1998	<u>6</u>	ATTORNEY APPEARANCE for defendant and counterclaim plaintiff Nicklaus Golf Equipment Co. L.C. by James P. Ryther, Mary Spaulding Burns and Richard Blake Johnston [Date Entered: 07/23/98, By: hp]
07/17/1998	<u>7</u>	ANSWER to complaint [1-1] with COUNTERCLAIMS by defendant Nicklaus Golf Equipment against plaintiff Vardon Golf Company Inc., [Date Entered: 07/23/98, By: hp]
07/20/1998	<u>4</u>	ANSWER to complaint [1-1], affirmative defenses and COUNTERCLAIMS; and jury demand by defendant Orlimar Golf Company against plaintiff Vardon Golf Company, Inc.; Notice of filing [Date Entered: 07/23/98, By: hp]
07/20/1998	<u>5</u>	ATTORNEY APPEARANCE for defendant Orlimar Golf Company by Robert V. Jambor, Li-Chung Daniel Ho, Vangelis Economou and Edward M. Keating [Date Entered: 07/23/98, By: hp]
07/27/1998	<u>8</u>	RETURN OF SERVICE of summons and complaint executed upon defendant Wilson Sporting Goods, Inc. on 7/24/98 [Date Entered: 07/30/98, By: hp]
08/21/1998	=	SCHEDULE set on 8/21/98 by Hon. David H. Coar : Rule 16(b) hearing set for 11:00 9/18/98 . Mailed notice [Date Entered: 08/21/98, By: tc]
08/24/1998	=	SCHEDULE set on 8/24/98 by Hon. David H. Coar : Rule 16(b) Scheduling/Pretial conference reset to 2:15 9/18/98 Mailed notice [Date Entered: 08/24/98, By: pm]
08/26/1998	<u>9</u>	ANSWER to complaint [1-1] and COUNTERCLAIM by defendant Wilson Sporting Goods Co. against plaintiff Vardon Golf Co Inc [Date Entered: 09/02/98, By: hp]
08/26/1998	<u>10</u>	ATTORNEY APPEARANCE for defendant Wilson Sporting Goods Co. by John W. Chestnut, Vasilios D. Dossas and Jeremy R. Kriegel [Date Entered: 09/02/98, By: hp]
08/28/1998	<u>11</u>	REPLY TO Orlimar Golf Company's COUNTERCLAIM [4-2] by counter-defendant Vardon Golf Company Golf Co Inc [Date Entered: 09/02/98, By: hp]
08/28/1998	<u>12</u>	REPLY TO Nicklaus Gulf Equipment's COUNTERCLAIM [7-2] by counter-defendant Vardon Golf Company, Inc. [Date Entered: 09/02/98, By: hp]
09/04/1998	<u>13</u>	RETURN OF SERVICE of summons and complaint executed upon

- defendant UT Golf Inc on 8/25/98 (Attachment) [Date Entered: 09/10/98, By: hp]
- 09/04/1998 14 REPLY TO Wilson Sporting Goods Co.'s COUNTERCLAIM [9-2] by counter-defendant Vardon Golf Company, Inc.; Notice of filing [Date Entered: 09/10/98, By: hp]
- 09/04/1998 15 STIPULATED MOTION by defendant Golfsmith International, Inc. for extension of time to answer or otherwise plead [Date Entered: 09/10/98, By: hp]
- 09/09/1998 16 ATTORNEY APPEARANCE for defendant Golfsmith International, Inc. by Ronald B. Coolley and John C Gatz [Date Entered: 09/10/98, By: hp]
- 09/09/1998 17 NOTICE of motion by defendant Golfsmith International, Inc. regarding motion for extension of time to answer or otherwise plead [15-1] [Date Entered: 09/14/98, By: hp]
- 09/09/1998 18 MINUTE ORDER of 9/9/98 by Hon. David H. Coar : Defendants' stipulated motion for extension of time to answer or otherwise plead is granted. [15-1] Defendant Golfsmith International shall answer or plead on or before 10/07/98. Mailed notice [Date Entered: 09/14/98, By: hp]
- 09/14/1998 19 ATTORNEY APPEARANCE for defendant UT Golf, Inc., by Joseph R. Marconi, Kurt C. Mehofer and Daniel Charles Murray [Date Entered: 09/15/98, By: hp]
- 09/14/1998 20 MOTION by defendant UT Golf, Inc., for extension of time to respond to the complaint ; Notice of motion [Date Entered: 10/02/98, By: hp]
- 09/18/1998 = SCHEDULE set on 9/18/98 by Hon. David H. Coar : Rule 16(b) Scheduling Conference held. All 26(a)(1) disclosures to be made on or before 12/15/98. Any amendments or joinder of other parties to be filed on or before 2/8/99. Discovery ordered closed on 10/7/99. Parties shall disclose expert testimony at any time prior 9/3/99. Parties may depose the other side's expert at any time prior to 10/15/99. Parties shall disclose any rebuttal expert at any time prior to 11/19/99. The Parties have until 1/14/2000 to depose the opposing party's rebuttal expert. Motion Dispositive is due 12/31/99. Pretrial order to be submitted on 4/16/2000. Pretrial conference set to 2:30 4/30/2000. Jury trial set to 10:00 5/10/2000. Mailed notice [Date Entered: 10/01/98, By: pm]
- 09/18/1998 21 MINUTE ORDER of 9/18/98 by Hon. David H. Coar : Motion of Defendant UT Golf, Inc. for extension of time to respond to the complaint is granted, [20-1] time is extended to and including 10/06/98. All discovery disputes/motions to be referred to the Magistrate Judge. Mailed notice [Date Entered: 10/02/98, By: hp]
- 10/02/1998 24 MOTION by defendant Golfsmith Intl Inc to substitute counsel from the firm of Arnold White & Durkee, for the following attorneys: Lewes T. Steadman, Jr., and Robert M. Ward ; Notice of motion [Date Entered: 10/15/98, By: hp]
- 10/05/1998 23 ANSWER to the complaint by defendant UT Golf, Inc.; Notice of filing [Date Entered: 10/14/98, By: hp]
- 10/07/1998 22 REFERRAL ORDER of 10/02/98: The case is referred to the Hon. Martin C. Ashman pursuant to Local General Rule 2.41(b). To conduct hearings and enter appropriate orders on the following pretrial motion/matter: All discovery motions. (For further detail see order.) Mailed notice [Date Entered: 10/13/98, By: hp]
- 10/07/1998 25 STIPULATED MOTION by defendant Golfsmith Intl Inc for an extension of time to answer complaint; Notice of motion [Date Entered: 10/15/98, By: hp]
- 10/13/1998 26 MINUTE ORDER of 10/13/98 by Hon. David H. Coar : Defendant Golfsmith International, Inc.'s motion for an extension of time to answer complaint is granted. [25-1] Leave granted Lewis T. Steadman, Jr. and Robert M. Ward to file and substitute appearance on behalf of defendant Golfsmith International. Leave granted Arnold White & Durkee to withdraw as attorney for defendant Golfsmith. [24-1] Mailed notice [Date Entered: 10/15/98, By: hp]

- 10/15/1998 27 ATTORNEY APPEARANCE for defendant Golfsmith International, Inc. by: Lewis T. Steadman, Jr., Robert M. Ward and Michael Ridgeway Hull [Date Entered: 10/16/98, By: hp]
- 11/06/1998 28 ANSWER to the complaint by defendant Golfsmith International, Inc.; jury demand [Date Entered: 11/09/98, By: hp]
- 12/16/1998 29 RULE 26(a)(1) disclosures by defendant Orlimar Golf Co; Notice of filing (Attachments) [Date Entered: 12/29/98, By: rm]
- 01/06/1999 30 ANSWER TO THE COMPLAINT by defendant Hippo Golf Equip Co; Jury demand [Date Entered: 01/08/99, By: ac]
- 03/17/1999 31 MOTION by plaintiff for agreed order of dismissal ; Notice of motion [Date Entered: 03/22/99, By: hp]
- 03/17/1999 32 MOTION by plaintiff to default Outlook Sports Technology d/b/a Hippo Golf (Exhibit); Notice of motion [Date Entered: 03/22/99, By: hp]
- 03/19/1999 33 MINUTE ORDER of 3/19/99 by Hon. David H. Coar : Plaintiff's motion for agreed order of dismissal as to defendant UT Golf, Inc., [32-1] and plaintiff's motion to default Outlook Sports Technology d/b/a Hippo Golf, are stricken for failure to appear on said motions. [31-1] Mailed notice [Date Entered: 03/22/99, By: hp]
- 04/20/1999 34 MOTION by plaintiff for agreed order of dismissal ; Notice of motion [Date Entered: 04/26/99, By: ll]
- 04/20/1999 37 MOTION by plaintiff to require appearance of counsel , or to strike answer of Outlook Sports Technology f/k/a Hippo, Inc. ; Notice of motion [Date Entered: 04/26/99, By: ll]
- 04/23/1999 35 AGREED ORDER regarding motion of dismissal [34-1] [Date Entered: 04/26/99, By: ll]
- 04/23/1999 36 MINUTE ORDER of 4/23/99 by Hon. David H. Coar : Motion for agreed order of dismissal. Motion is granted. [34-1] Enter agreed order of dismissal as to defendant UT Golf, Inc. No notice [Date Entered: 04/26/99, By: ll]
- 04/23/1999 38 MINUTE ORDER of 4/23/99 by Hon. David H. Coar : It is hereby ordered that defendant Outlook Sports Technology files an appearance of counsel by 05/14/99. [37-1] If an appearance of counsel is not on file pursuant to all rules of the court, the court will strike the defendant, Outlook Sports' answer. The motion to strike is continued to 05/14/99 at 9:30 a.m. [37-2] Mailed notice [Date Entered: 04/26/99, By: ll]
- 05/13/1999 39 ATTORNEY APPEARANCE for defendant Hippo Golf Equip Co by Thomas Gerard Pasternak, Norman M. Hirsch and Rudy I. Kratz [Date Entered: 05/14/99, By: ip]
- 05/14/1999 40 MINUTE ORDER of 5/14/99 by Hon. David H. Coar : Status hearing held. Motion to strike is moot and terminated. [37-2] The Court having set a schedule on 09/19/98 after a Rule 16(b) scheduling conference, a Rule 16(b) conference as to Outlook will not be set. The Schedule entered 09/18/98 shall apply to all remaining defendants including Outlook Sports. Mailed notice [Date Entered: 05/18/99, By: ll]
- 05/20/1999 41 TRANSCRIPT of proceedings for the following date(s): 05/14/99 Before Honorable David H. Coar [Date Entered: 05/21/99, By: ll]
- 09/09/1999 42 MOTION by plaintiff for agreed order of dismissal ; Notice [Date Entered: 09/17/99, By: ll]
- 09/15/1999 43 MINUTE ORDER of 9/15/99 by Hon. David H. Coar : Motion for agreed order of dismissal is granted. [42-1] All of plaintiff's claims against Orlimar & Orlimar's counterclaim against the plaintiff are dismissed with prejudice, each party to bear its own costs and attorneys' fees. The Court finds no just reason to delay entry of this order of dismissal and the Clerk shall forthwith enter final judgment. (Entered Agreed Order of Dismissal) Mailed notice [Date Entered: 09/17/99, By: ll]

09/15/1999 44 ENTERED JUDGMENT [Date Entered: 09/17/99, By: ll]

09/20/1999 48 MOTION by defendant Golfsmith Intl Inc for enforcement of ral settlement agreement and for attorney fees; Notice. [Date Entered: 10/06/99, By: ll]

09/23/1999 46 MOTION by plaintiff to compel discovery (Attachments); Notice. [Date Entered: 09/30/99, By: ll]

09/27/1999 45 RESPONSE by Golfsmith Intl Inc to Vardon's motion to compel. (Attachment). [Date Entered: 09/28/99, By: ll]

09/28/1999 47 MINUTE ORDER of 9/28/99 by Hon. Martin C. Ashman : Oral argument held. Plaintiff's motion to compel discovery is granted. [46-1] Rule 30 (b)(6) deposition shall be taken in the month of October, 1999. Mailed notice [Date Entered: 09/30/99, By: ll]

09/29/1999 49 MEMORANDUM of law by defendant Golfsmith Intl Inc in support motion for enforcement of oral settlement agreement; affidavit of Lewis T. Steadman, Jr. [48-1] (Attachments). [Date Entered: 10/06/99, By: ll]

10/04/1999 50 MINUTE ORDER of 10/4/99 by Hon. David H. Coar : Goldsmith's motion for enforcement of Oral Settlement Agreement and for attorneys' and for attorney' Fees is referred to the Magistrate Judge, Judge Ashman. Mailednotice [Date Entered: 10/06/99, By: ll]

10/06/1999 51 MINUTE ORDER of 10/6/99 by Hon. Martin C. Ashman : The court having been notified and the parties being in agreement, the following briefing schedule is set: plaintiffs response to defendant Golfsmith's motion forenforcement of oral settlement and for attorneys' fees to be filed by 10/14/99. Reply due 10/22/99. [48-1] [48-2] Oral argument on defendant Golfsmith's motion for enforcement of oral settlement agreement and for attorneys' fees is set for 11/22/99 at 10:30 a.m. Mailed notice [Date Entered: 10/07/99, By: hp]

10/06/1999 52 PRECAUTIONARY MOTION by Golfsmith Intl Inc to suspend the scheduled deadlines in this case pending enforcement of the settlement agreement; Notice [Date Entered: 10/14/99, By: ar]

10/07/1999 = SCHEDULE set on 10/7/99 by Hon. David H. Coar : Noticed motion scheduled for 9:15 10/12/99 No notice [Date Entered: 10/07/99, By: pm]

10/12/1999 53 MINUTE ORDER of 10/12/99 by Hon. David H. Coar : Golfsmith's precautionary motion to suspend the scheduled deadlines in this case pending enforcement of the settlement agreement is denied [52-1]. Mailed notice [Date Entered: 10/14/99, By: ar]

10/19/1999 55 AGREED MOTION by Vardon Golf Co Inc. & Hippo Golf Equip Co for entry of judgment ; Notice. [Date Entered: 10/26/99, By: tlm]

10/20/1999 54 TRANSCRIPT of proceedings for the following date(s): 10/12/99 Before Honorable David H. Coar [Date Entered: 10/21/99, By: tw]

10/22/1999 62 AGREED MOTION by Vardon Golf Co Inc for entry of a protective order (Attachment); Notice [Date Entered: 10/28/99, By: jmp]

10/25/1999 56 MINUTE ORDER of 10/25/99 by Hon. David H. Coar : Agreed motion for entry of judgment is granted. [55-1] Final judgment is entered against Outlook Sports Technology, Inc. in the amount of \$20,000.00 and in favor of the plaintiff, without costs to either party. The Court finds that there is no just reason to delay entry of final judgment. terminating party Hippo Golf Equip Co Mailed notice [Date Entered: 10/26/99, By: tlm]


10/25/1999 57 ENTERED JUDGMENT [Date Entered: 10/26/99, By: tlm]




10/25/1999 58 STIPULATION for dismissal with prejudice by plaintiff and Wilson Sporting Goods [Date Entered: 10/26/99, By: tlm]





10/25/1999 59 MINUTE ORDER of 10/25/99 by Hon. David H. Coar : Pursuant to Stipulation for Dismissal with Prejudice, Defendant Wilson Sporting Goods Co., is dismissed with prejudice. Each side is to bear its own costs and expenses.terminating party Wilson Sporting Mailed notice [Date Entered:














- 10/26/99, By: tlm]
- 10/25/1999 60 APPLICATION for leave to appear pro hac vice by Willem G. Schuurman for Golfsmith Intl Inc ; Order entered granting leave by Hon. David H. Coar [Date Entered: 10/26/99, By: tlm]
- 10/25/1999 61 APPLICATION for leave to appear pro hac vice by Adam V. Floyd for Golfsmith Intl Inc ; Order entered granting leave by Hon. David H. Coar [Date Entered: 10/26/99, By: tlm]
- 10/27/1999 63 MINUTE ORDER of 10/27/99 by Hon. David H. Coar : Agreed motion for entry of a protective order is denied [62-1] No notice [Date Entered: 10/28/99, By: jmp]
- 11/12/1999 64 TRANSCRIPT of proceedings for the following date(s): 10/27/99 Before Honorable David H. Coar [Date Entered: 11/16/99, By: ls]
- 11/12/1999 65 MOTION by Golfsmith Intl Inc to compel discovery (Attachments); Notice. [Date Entered: 11/17/99, By: tlm]
- 11/15/1999 = SCHEDULE set on 11/15/99 by Hon. Edward A. Bobrick : Noticed motion set for 10:00 11/16/99 No notice [Date Entered: 11/15/99, By: th]
- 11/16/1999 66 MINUTE ORDER of 11/16/99 by Hon. Edward A. Bobrick : Defendant's motion to compel discovery [65-1] is entered and continued to 10:00 a.m. on 11/22/99 before Magistrate Judge Ashman. Judge's staff mailed notice [Date Entered: 11/17/99, By: tlm]
- 11/17/1999 67 MINUTE ORDER of 11/17/99 by Hon. Martin C. Ashman : Oral argument on plaintiff's motion for enforcement of oral settlement agreement [48-1] and for attorneys fees [48-2] is reset to 11/29/99 at 1:30 p.m. Mailed notice [Date Entered: 11/18/99, By: hp]
- 11/22/1999 68 MINUTE ORDER of 11/22/99 by Hon. Martin C. Ashman : Oral argument held. Defendant Golfsmith's motion to compel discovery [65-1] is granted as to what was said during the conversation on July 23 as to whether an oral settlement agreement was reached, but denied in all other respects without prejudice. Defendant Golfsmith is granted leave to file a reply brief by 12/2/99, to its motion to enforce settlement. Evidentiary hearing on whether an oral settlement agreement was reached is set for 12/22/99, at 11:00 a.m. Oral argument date of 11/29/99 is stricken. Mailed notice [Date Entered: 11/23/99, By: eav]
- 12/03/1999 69 NOTICE by William G. Schuurman attorney for defendant Golfsmith Intl Inc of change of address [Date Entered: 12/07/99, By: dk]
- 12/07/1999 70 MOTION by plaintiff Vardon Golf Co Inc, defendant Nicklaus Golf Equip for agreed order of dismissal ; Notice of motion [Date Entered: 12/30/99, By: eav]
- 12/15/1999 71 MOTION by defendant Golfsmith Intl Inc to voluntarily withdraw its motion for enforcement of a settlement agreement without prejudice ; Notice of motion [Date Entered: 12/30/99, By: eav]
- 12/21/1999 72 MINUTE ORDER of 12/21/99 by Hon. David H. Coar : Golfsmith's motion to voluntarily withdraw its motion for enforcement of a settlement agreement without prejudice is granted. [71-1] Doc # [48-1] & [48-2] Golfsmith's motion for enforcement of settlement agreement and for attorneys fees is withdrawn and terminated. Mailed notice [Date Entered: 12/30/99, By: eav]
- 12/22/1999 74 ENTERED JUDGMENT [Date Entered: 12/30/99, By: eav]
- 12/22/1999 73 MINUTE ORDER of 12/22/99 by Hon. David H. Coar : Motion of agreed order of dismissal is granted. [70-1] All claims of the plaintiff's complaint against Nicklaus and Nicklaus' counterclaims against the plaintiff, are hereby dismissed with prejudice on the basis of the settlement reached. Each party shall bear its own costs and attorneys' fees. Pursuant to FRCP 54(b), the Court finds no just reason to delay entry of this agreed order of dismissal. (Entered Agreed Order of Dismissal) Mailed notice [Date Entered: 12/30/99, By: eav]


- 12/29/1999 75 TRANSCRIPT of proceedings for the following date(s): 10/22/99 Before Honorable Martin C. Ashman [Date Entered: 12/30/99, By: eav]
- 12/30/1999 = MAILED on 12/30/99 Trademark report and certified copy of Judge Coar's order dated 12/22/99 to Washington, D.C. [Date Entered: 12/30/99, By: eav]
- 12/30/1999 77 MOTION by defendant Golfsmith Intl Inc for leave to file brief in excess of 15 pages; Notice. [Date Entered: 01/11/00, By: bw]
- 12/30/1999 78 MOTION by defendant Golfsmith Intl Inc for summary judgment of noninfringement of U.S. Patent No. 5,401,021; Rule 56.1(a)(3) statement; Notice. [Date Entered: 01/11/00, By: bw]
- 12/30/1999 79 BRIEF by defendant Golfsmith Intl Inc in support of its motion for summary judgment of noninfringement of U.S. Patent No. 5,401,021 [78-1]; (Attachments). [Date Entered: 01/11/00, By: bw]
- 01/03/2000 80 MOTION by defendant Golfsmith Intl Inc for leave to file brief in excess of 15 pages ; Notice. [Date Entered: 01/11/00, By: bw]
- 01/03/2000 81 MOTION by defendant Golfsmith Intl Inc for summary judgment of noninfringement of U.S. Patent No. 5,301,941; Rule 56.1(a)(3) statement; Notice. [Date Entered: 01/11/00, By: bw]
- 01/03/2000 82 BRIEF by defendant Golfsmith Intl Inc in support of its motion for summary judgment of noninfringement of U.S. Patent No. 5,301,941 [81-1]; (Attachments). [Date Entered: 01/11/00, By: bw]
- 01/05/2000 76 MINUTE ORDER of 1/5/00 by Hon. Martin C. Ashman : All matters relating to the referral of this action having been resolved, the case is returned to the assigned judge. Terminating the case referral . No notice [Date Entered: 01/06/00, By: gk]
- 01/06/2000 = SCHEDULE set on 1/6/00 by Hon. David H. Coar : Noticed motions scheduled for 9:15 1/10/00 No notice [Date Entered: 01/06/00, By: pm]
- 01/10/2000 83 MINUTE ORDER of 1/10/00 by Hon. David H. Coar : Golfsmith's motion for leave to file brief in excess of 15 pages on the summary judgment motion for the 5,401,021 patent is granted. [77-1] Leave granted to file 21 page brief. Answerbrief to motion for summary judgment of noninfringement of U.S. Patent No. 5,401,021 due 1/31/00. [78-1] Reply to answer brief due 2/22/00. Ruling by mail on Golfsmith's motion for summary judgment of noninfringement of US Patent No. 5,401,021. Mailed notice [Date Entered: 01/11/00, By: bw]
- 01/10/2000 84 MINUTE ORDER of 1/10/00 by Hon. David H. Coar : Golfsmith's motion for leave to file brief in excess of 15 pages on the summary judgment motion for the 5,301,941 patent is granted. [80-1] Leave granted to file 18 page brief. Answerbrief to motion for summary judgment of noninfringement of U.S. Patent No. 5,301,941 due 1/31/00. [81-1] Reply to answer brief due 2/22/00. Ruling by mail on Golfsmith's motion for summary judgment of noninfringement of US Patent No. 5,301,941. Mailed notice [Date Entered: 01/11/00, By: bw]
- 01/13/2000 85 UNOPPOSED MOTION by plaintiff for withdrawal of Golfsmith's motion to enforce a settlement agreement with prejudice (Attachment); Notice. [Date Entered: 01/19/00, By: vj]
- 01/14/2000 = [Date Entered: 01/14/00, By: pm]
- 01/14/2000 87 MOTION by defendant Golfsmith Intl Inc to file replacement page of Golfsmith's brief in support of its motion for summary judgment of noninfringement of U.S. Patent No. 5,401,021 (Attachment); Notice. [Date Entered: 01/21/00, By: vj]
- 01/18/2000 86 MINUTE ORDER of 1/18/00 by Hon. David H. Coar: Unopposed motion for withdrawal of Golfsmith's motion to enforce a settlement agreement with prejudice is granted [85-1]. No notice [Date Entered: 01/19/00, By: vj]
- 01/20/2000 88 EXHIBIT N by defendant Golfsmith Intl Inc.'s brief in support of its motion for summary judgment of noninfringement of U.S. Patent No. 5,301,941

- (Attachment); Notice. [Date Entered: 01/21/00, By: vj]
- 01/20/2000 89 MINUTE ORDER of 1/20/00 by Hon. David H. Coar: Golfsmith's oral motion for leave to supplement their 2nd motion for summary judgment with Exhibit N is granted. Golfsmith's motion to file replacement page of Golfsmith's brief in support of motion for summary judgment of non-infringement of U.S. Patent No. 5,401,021 is granted [87-1]. Mailed notice [Date Entered: 01/21/00, By: vj]
- 01/31/2000 90 RESPONSE by Vardon Golf Co Inc to Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No. 5,301,941 [81-1] and cross motion for summary judgment of claims 12-17 of the '941 patent. [Date Entered: 02/02/00, By: vj]
- 01/31/2000 91 RESPONSE by Vardon Golf Co Inc to Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No. 5,401,021 [78-1] and cross motion for infringement of '021 claims 3 and 7. [Date Entered: 02/02/00, By: vj]
- 01/31/2000 92 LR 56.1 (b)(3) statement in response to Golfsmith's LR 56.1(a)(3) statement in support of Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No. 5,301,941 and Vardon's cross motion for infringement of '941 patent claims 12-17. [Date Entered: 02/02/00, By: vj]
- 01/31/2000 93 LR 56.1(b)(3) statement in response to Golfsmith's LR 56.1(a)(3) statement in support of Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No. 5,401,021 and Vardon's cross motion for infringement of '021 patent claims 3 and 7. [Date Entered: 02/02/00, By: vj]
- 02/01/2000 94 NOTICE OF FILING by Vardon Golf Co Inc of substitute page, to replace page 3 of his response to Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No. 5,401,021 and cross motion for infringement of '021 claims 3 and 7. [Date Entered: 02/02/00, By: vj]
- 02/01/2000 95 EXHIBITS by plaintiff to response to Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No. 5,401,021 and cross motion for infringement of '021 claims 3 and 7 [91-1] [2 vols: 95-1, 95-2]. [Date Entered: 02/02/00, By: vj]
- 02/16/2000 96 OPPOSITION by Golfsmith to Vardon's motion to quash notice of deposition and subpoena for Dillis Allen. [Date Entered: 02/17/00, By: vj]
- 02/17/2000 101 MOTION by Vardon Golf Co Inc to quash notice of deposition and subpoena for Dillis Allen (Attachments); Notice. [Date Entered: 03/03/00, By: vj]
- 02/18/2000 97 OPPOSITION by Golfsmith to Vardon's motion to quash and request for extension of time to file reply brief. [Date Entered: 02/22/00, By: vj]
- 02/18/2000 98 EMERGENCY MOTION by Vardon Golf Co Inc to quash notice of deposition and subpoena for Dillis Allen (Attachments); Notice. [Date Entered: 02/25/00, By: vj]
- 02/23/2000 = [Date Entered: 02/23/00, By: th]
- 02/24/2000  99 MINUTE ORDER of 2/24/00 by Hon. Edward A. Bobrick: Vardon's emergency motion to quash notice of deposition and subpoena for Dillis Allen is denied [98-1], as stated in open court. Defendant's oral motion for leave to file its reply brief seven days after the deposition is granted. Detailed order to follow. Notices mailed by judge's staff [Date Entered: 02/25/00, By: vj]
- 02/29/2000 100 REFERRAL ORDER of 2/29/00 The case is referred to the Hon. Martin C. Ashman pursuant to Local Rule 72.1 for Vardon's motion to quash notice of deposition and subpoena for Dillis Allen. Mailed notice [Date Entered: 03/01/00, By: vj]
- 03/07/2000 = SCHEDULE set on 3/7/00 by Hon. Martin C. Ashman : Status hearing set to 10:00 3/22/00 before Magistrate Judge Ashman in courtroom 2214. Mailed

- notice [Date Entered: 03/07/00, By: is]
- 03/21/2000 102 REPLY brief by Golfsmith Intl Inc in support of its motion for summary judgment of noninfringement of U.S. Patent No. 5,401,021 [78-1] (Attachments). [Date Entered: 03/23/00, By: vj]
- 03/21/2000 103 REPLY brief by Golfsmith Intl Inc in support of its motion for summary judgment of noninfringement of U.S. Patent No. 5,301,941 [81-1] (Attachments). [Date Entered: 03/23/00, By: vj]
- 03/21/2000 104 LOCAL RULE 56.1(b)(3) statement in response to Vardon's LR 56.1(a)(3) statement in support Vardon's motion for summary judgment of infringement of claims 3 and 7 of U.S. Pant No. 5,401,021 by Golfsmith Intl Inc. [Date Entered: 03/23/00, By: vj]
- 03/21/2000 105 LOCAL RULE 56.1(b)(3) statement in response to Vardon's LR 56.1(a)(3) statement in support of Vardon's motion for summary judgment on infringement of claims 3 and 7 of U.S. Patent No. 5,401,021 by Golfsmith International Inc. [Date Entered: 03/23/00, By: vj]
- 03/22/2000  106 MINUTE ORDER of 3/22/00 by Hon. Martin C. Ashman: Status hearing held. All matters relating to the referral of this action having been resolved, the case is returned to the assigned judge. No notice [Date Entered: 03/23/00, By: vj]
- 03/27/2000 108 MOTION by plaintiff to file a replacement page to its LR 56.1(b)(3) statement in response to Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No. 5,401,021 (Attachment); Notice of motion [Date Entered: 04/04/00, By: eav]
- 03/28/2000 107 TRANSCRIPT of proceedings for the following date(s): 2/24/00 Before Honorable Edward A. Bobrick [Date Entered: 03/28/00, By: eav]
- 03/28/2000 == [Date Entered: 03/28/00, By: pm]
- 04/03/2000  109 MINUTE ORDER of 4/3/00 by Hon. David H. Coar : Vardon's motion to file a replacement page to its LR 56.1(b)(3) statement in response to Golfsmith's motion for partial summary judgment of noninfringement of U.S. Patent No.5,401,021 is granted [108-1] The filing of a final pretrial order on 4/14/00 is not required at this time, the Court will maintain all other deadlines and the deadline for filing the pretrial order will be reset after the resolution of the pending motions for summary judgment. Mailed notice [Date Entered: 04/04/00, By: eav]
- 04/14/2000 == SCHEDULE set on 4/14/00 by Hon. David H. Coar : Final Pretrial order to be submitted on 5/29/00. Pretrial conference reset to 2:00 6/23/00. Jury trial reset to 10:00 7/24/00. Mailed notice [Date Entered: 04/14/00, By: pm]
- 04/14/2000 110 TRANSCRIPT of proceedings for the following date(s): 9/28/99 Before Honorable Martin C. Ashman [Date Entered: 04/17/00, By: eav]
- 04/20/2000 111 STATEMENT OF SATISFACTION OF JUDGMENT by plaintiff Vardon Golf Co Inc against Outlook Sports Tech in the amount of \$20,000.00 (Attachment) [Date Entered: 04/21/00, By: eav]
- 06/02/2000 112 FINAL PRETRIAL ORDER SUMMARY by defendant Golfsmith Intl Inc (Attachments) [Date Entered: 06/05/00, By: eav]
- 06/06/2000  113 MINUTE ORDER of 6/6/00 by Hon. David H. Coar : For the reasons stated in the attached memorandum opinion and order, Golfsmith's motion for summary judgment # [78-1] is denied in part and granted in part. The Court grantsGolfsmith's motion with respect to the Penick and Jetstream clubs on Claims 3 through 5 regarding literal infringement and infringement under the doctrine of equivalents; Denies both Golfsmith's motion and Vardon's cross-motion for the Jetstream clubs on Claim 7 regarding literal infringement and infringement under the doctrine of equivalents; GrantsGolfsmith's motion for the Penick clubs on Claim 7 regarding literal infringement; Denies Golfsmith's motion and Vardon's cross-motion for the Penick clubs on Claim 7 regarding the doctrine of equivalents; and grantsGolfsmith's motion with


- respect to the Penick and Jetstream clubs on claims 9, 11, 12, and 14 regarding literal infringement and infringement under the doctrine of equivalents. Golfsmith's motion for summary judgment #[81-1] is denied in part and granted in part. The Court grants Golfsmith's motion for summary judgment with regard to literal infringement of Claims 12 through 18. All motions for summary judgment with regard to the doctrine of equivalents are denied as are Vardon's cross-motions for summary judgment. (Entered Memorandum Opinion and Order) Mailed notice [Date Entered: 06/08/00, By: eav]
- 06/16/2000 114 MOTION by defendant Golfsmith Intl Inc for admission pro hac vice of Brian K. Buss (Attachments) [Date Entered: 06/22/00, By: eav]
- 06/16/2000 115 AFFIDAVIT of Gregory L. Porter in support of application for leave to appear pro hac vice [Date Entered: 06/22/00, By: eav]
- 06/16/2000 116 AFFIDAVIT of Andrew DiNovo in support of motion to admit pro hac vice [Date Entered: 06/22/00, By: eav]
- 06/21/2000 117 REPLY by defendant Golfsmith Intl Inc to Vardon's motion in limine to exclude certain prior art of Golfsmith (Attachments) [Date Entered: 06/22/00, By: eav]
- 06/21/2000  118 MINUTE ORDER of 6/21/00 by Hon. David H. Coar : Motion for admission pro hac vice of Brian K. Buss is granted upon the payment of the filing fee. Mailed notice [Date Entered: 06/22/00, By: eav]
- 06/21/2000 119 APPLICATION for leave to appear pro hac vice by Brian K. Buss for defendant Golfsmith Intl Inc ; Order entered granting leave by Hon. David H. Coar [Date Entered: 06/23/00, By: eav]
- 06/23/2000 = SCHEDULE set on 6/23/00 by Hon. David H. Coar : Final Pretrial conference held and continued generally. Trial is hereby stricken. Mailed notice [Date Entered: 06/23/00, By: pm]
- 09/15/2000 120 TRANSCRIPT of proceedings for the following date(s): 6/23/00 Before Honorable David H. Coar [Date Entered: 09/18/00, By: eav]
- 10/20/2000 121 NOTICE by Lewis T. Steadman of change of address. [Date Entered: 10/23/00, By: mw]
- 08/02/2002 = SCHEDULE set on 8/2/02 by Hon. David H. Coar : Status hearing set to 9:00 8/21/02 . Mailed notice [Date Entered: 08/02/02, By: pm]
- 08/13/2002  122 LETTER from defendant Golfsmith Intl. Inc. attorney of change of attorney's address dated 08/09/02 [Date Entered: 08/14/02, By: cdy]
- 08/21/2002 = SCHEDULE set on 8/21/02 by Hon. David H. Coar : Status hearing held and continued to 9:00 10/1/02 . Mailed notice [Date Entered: 08/21/02, By: pm]
- 09/06/2002 = SCHEDULE set on 9/6/02 by Hon. David H. Coar : Status hearing reset to 9:00 9/30/02, date of 10/1/02 is stricken . Mailed notice [Date Entered: 09/06/02, By: pm]
- 09/30/2002 = SCHEDULE set on 9/30/02 by Hon. David H. Coar : Status hearing held and continued to 9:00 10/7/02 . No notice [Date Entered: 09/30/02, By: tc]
- 10/07/2002  123 AGREEMENT of partial dismissal with prejudice [Date Entered: 10/09/02, By: eav]
- 10/07/2002  124 MINUTE ORDER of 10/7/02 by Hon. David H. Coar : Status hearing held and continued to 11/15/02 at 9:30 a.m. Pursuant to a stipulation between the parties, Vardon and Golfsmith agree to dismissal with prejudice of Vardon's claims of infringement against Golfsmith with respect to both the '021 and '997 patents. Vardon further agrees to dismiss with prejudice Golfsmith's claims of non-infringement and invalidity against Vardon with respect to both '021 and '997 patents and Golfsmith's claims of unenforceability of the '997 patent. Should the Federal Circuit reverse any finding of inequitable conduct in the Karsten 2785 case, then such finding

- shall apply to this case as well. Mailed notice [Date Entered: 10/09/02, By: eav]
- 10/10/2002  125 COMBINED MOTION AND MEMORANDUM by plaintiff for withdrawal of appearances of Thomas G. Scavone, Dean D. Niro, Patrick F. Solon and Keith A. Vogt ; Notice of motion [Date Entered: 10/16/02, By: eav]
- 10/15/2002  126 MINUTE ORDER of 10/15/02 by Hon. David H. Coar : Combined motion and memorandum for withdrawal of appearance. Answer brief to motion due 10/22/02. [125-1] Reply to answer brief due 10/30/02. Hearing on combined motion and memorandum for withdrawal of appearance set for 11/7/02 at 9:00 a.m. No notice [Date Entered: 10/16/02, By: eav]
- 10/16/2002  127 UNOPPOSED MOTION by plaintiff Vardon Golf Co Inc for withdrawal of appearance of Michael P. Mazza ; Notice of motion [Date Entered: 10/23/02, By: eav]
- 10/22/2002  128 MINUTE ORDER of 10/22/02 by Hon. David H. Coar : Unopposed motion for withdrawal of appearance is continued to 10/24/02 at 9:00, defendants will be appearing by phone. [127-1] Mailed notice [Date Entered: 10/23/02, By: eav]
- 10/24/2002  129 MINUTE ORDER of 10/24/02 by Hon. David H. Coar: Unopposed motion for withdrawal of appearance is granted and terminated [127-1]. Leave granted Michael P. Mazza (as associated with the law firm of Niro Scavone, Haller and Nero) to withdraw his appearance. Mailed notice [Date Entered: 10/25/02, By: cv]
- 11/05/2002  130 MEMORANDUM in RESPONSE by attorney's Scavone, Niro, Solon and Vogt to 11/30/02 Vardon Golf letter of withdrawal. [Date Entered: 11/06/02, By: gy]
- 11/07/2002  131 MINUTE ORDER of 11/7/02 by Hon. David H. Coar : Plaintiff's motion for withdrawal of appearances of Thomas G. Scavone, Dean D. Niro, Patrick F. Solon and Keith A. Vogt is granted. [125-1] Mailed notice [Date Entered: 11/08/02, By: eav]
- 12/10/2002  132 ACKNOWLEDGEMENT of receipt of short record on appeal USCA 02-4157 [Date Entered: 12/11/02, By: eav]
- 12/19/2002 133 TRANSCRIPT of proceedings for the following date(s): Held on 11/07/02 before Honorable David H. Coar. [Date Entered: 12/23/02, By: cm]
- 12/27/2002  134 CERTIFIED copy of Order dated 12/6/02 from the 7th Circuit. It is ordered that the petition is transferred to the Court of Appeals for the Federal Circuit under 28 U.S.C. 1631. (02-4157) [Date Entered: 12/31/02, By: eav]
- 01/03/2003  137 ORDER dated 1/3/03 from the Federal Circuit. It is ordered that: Niro, Scavone is directed to respond with 10 days of the date of filing of this order. Any other respondent may also respond within that time. (Miscellaneous Docket No. 722) (Attachment) [Date Entered: 01/15/03, By: eav]
- 01/07/2003  135 Order dated 1/2/03 from the Federal Circuit. (Misc No. 722) (Attachment) [Date Entered: 01/08/03, By: eav]
- 01/10/2003  138 ORDER dated 1/10/03 from the Federal Circuit. It is ordered that: Niro, Scavone is directed to file a consolidated response within 10 days of the date of filing of this order. Any other respondent may also respond within that time. (Misc. Docket No. 722, 723, 724) [Date Entered: 01/15/03, By: eav]
- 01/14/2003 136 TRANSCRIPT of proceedings for the following date(s): 10/15/02 Before Honorable David H. Coar [Date Entered: 01/15/03, By: eav]
- 05/06/2003  139 VOLUNTARY PETITION by plaintiff Vardon Golf Co Inc in Bankruptcy No. B03-19592; Notice of filing [Date Entered: 05/07/03, By: eav]

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[2002 U.S. Dist. LEXIS 4272](#)

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US District Court Civil Docket

US District Court for the Northern District of Illinois
(Chicago)

1:99cv2785

Vardon Golf Co Inc v. Karsten Mfg Corp

This case was retrieved from the court on Thursday, April 29, 2004

Date Filed: 04/27/1999	Class TERMED APPEAL
Assigned To: Honorable David H Coar	Code: PROTO DENLO
Referred To:	Closed: Yes
Nature of suit: Patent (830)	Statute: 35:271
Cause: Patent Infringement	Jury
Lead Docket: None	Demand: Plaintiff
Other Docket: None	Demand
Jurisdiction: Federal Question	Amount: \$0

Litigants

Vardon Golf Co Inc
PLAINTIFF

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v.

Karsten Manufacturing Corporation
DEFENDANT

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[Term: 10/28/1999]
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Karsten Manufacturing Corporation
COUNTER-CLAIMANT

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v.

Vardon Golf Co Inc
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Karsten Manufacturing Corporation
THIRD-PARTY PLAINTIFF

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v.

Dillis V Allen
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Date	#	Proceeding Text
04/27/1999	<u>1</u>	COMPLAINT (Exhibits); jury demand - Civil cover sheet - Appearance(s) of Thomas G. Scavone, Michael P. Mazza, Keith A. Vogt, Patrick Francis Solon as attorney(s) for plaintiff (Original and one copy of summons(es) issued.) (Documents: 1-1 through 1-3) [Date Entered: 04/29/99, By: ar]
04/27/1999	=	RECEIPT regarding payment of filing fee paid; on 4/27/99 in the amount of \$ 150.00, receipt # 1042628. [Date Entered: 04/29/99, By: ar]
04/27/1999	<u>2</u>	NOTICE by plaintiff of claims involving patent pursuant to Local Rule 13 [Date Entered: 04/29/99, By: ar]
04/29/1999	=	MAILED patent report report to Commissioner of Patents and Reports together with copies of notice of claims involving patent pursuant to Local

Rule 13 [2-1] and Exhibits A and B [Date Entered: 04/29/99, By: ar]

04/29/1999 = SUMMONS and one copy issued as to Karsten Mfg Corp (Attachment) [Date Entered: 04/30/99, By: ar]

06/15/1999 3 MINUTE ORDER of 6/15/99 by Hon. David H. Coar : Rule 16(b) scheduling conference set for 1:30 pm on 07/16/99 in chambers. The court hereby opts into Rule 26(a)(1) for purposes of this case. Proposed discovery plan pursuant to Rule 26(f) and proposed scheduling order pursuant to Rule 16(b) to be filed in chambers. (See attached forms for report of planning conference and proposed scheduling order.) (See reverse of minute order.) Mailed notice [Date Entered: 06/21/99, By: ar]

07/07/1999 4 RULE 26(a)(1) disclosures by plaintiff [Date Entered: 07/08/99, By: ar]

07/15/1999 5 ANSWER to complaint [1-1] and COUNTERCLAIM by Karsten Mfg Corp against Vardon Golf Co Inc (Attachments); Notice [Date Entered: 07/16/99, By: ar]

07/15/1999 6 ATTORNEY APPEARANCE for Karsten Mfg Corp by Troy B. Froderman, David A. Roodman, Thomas D. Paulius and James V. Garvey [Date Entered: 07/16/99, By: ar]

07/16/1999 = SCHEDULE set on 7/16/99 by Hon. David H. Coar : Rule 16(b) scheduling conference held. All disclosures required by Rule 26(a)(1) shall be made on or before for plaintiff - 7/15/99, for defendant 7/31/99. Any amendments to pleadings or actions to join other parties shall be filed on or before 9/15/99. Discovery ordered closed on 12/15/99. The parties shall disclose expert testimony pursuant to Rule 26(a)(2) on or before 11/1/99. The parties may depose the other side's expert at any time prior to 12/1/99. The parties shall disclose any rebuttal expert pursuant to Rule 26(a)(2)(c) at any time prior to 11/30/99. The parties shall have until 12/15/99 to depose the opposing party's rebuttal expert. Motion Dispositive is due 3/1/2000. Pretrial order to be submitted on 7/17/2000. Pretrial conference set to 2:00 7/28/2000. Jury trial set to 10:00 8/21/2000. Markman Hearing hearing set for 10:00 1/6/2000. Mailed notice [Date Entered: 08/02/99, By: pm]

07/26/1999 7 APPLICATIONS for leave to appear pro hac vice by Troy B. Froderman and David Roodman for Karsten Mfg Corp; Orders entered granting leave by Hon. David H. Coar [Date Entered: 08/02/99, By: ar]

07/30/1999 8 MINUTE ORDER of 7/30/99 by Hon. David H. Coar : Karsten Manufacturing Corporation is granted leave to file third party complaint instanter and the clerk shall issue summons relating to the third-party complaint of Karsten. Mailed notice [Date Entered: 08/02/99, By: ar]

07/30/1999 9 THIRD-PARTY COMPLAINT by Karsten Mfg Corp against Dillis V. Allen (Attachments); Notice [Date Entered: 08/02/99, By: ar]

07/30/1999 = THIRD-PARTY SUMMONS and one copy issued as to Dillis V Allen [Date Entered: 08/02/99, By: ar]

08/03/1999 10 REFERRAL ORDER of 08/03/99: The case is referred to the Hon. Morton Denlow for all discovery motions pursuant to General Rule 2.41(b). (For further detail see order.) Mailed notice [Date Entered: 08/04/99, By: ar]

08/18/1999 = SCHEDULE set on 8/18/99 by Hon. Morton Denlow : Initial status hearing is set for 9/9/99 at 10:00 a.m. before Magistrate Judge Morton Denlow in Courtroom 2496. Parties shall deliver a copy of an initial status report to chambers, Room 2402, two business days before the initial status hearing. If the parties have recently prepared and filed an initial status report, the submission of the previously filed initial status report is sufficient. Mailed notice [Date Entered: 08/18/99, By: dmk]

08/27/1999 11 ANSWER AND AFFIRMATIVE DEFENSES TO THIRD PARTY COMPLAINT third-party complaint [9-1] by Dillis V Allen [Date Entered: 09/01/99, By: ar]

09/01/1999 = MAILED Rule 3.14 letter to Keith A. Vogt [Date Entered: 09/01/99, By: ar]

09/07/1999 12 JOINT STATUS REPORT by Vardon Golf Co Inc, Karsten Mfg Corp, Dillis V




- Allen (Attachments) [Date Entered: 09/10/99, By: ar]
- 09/09/1999 13 ANSWER TO COUNTERCLAIM [5-2] and affirmative defenses by Vardon Golf Co Inc [Date Entered: 09/12/99, By: ar]
- 09/09/1999 = SCHEDULE set on 9/9/99 by Hon. Morton Denlow : Status hearing held; continued to 10:00 10/7/99 . Mailed notice [Date Entered: 09/14/99, By: dmk]
- 09/27/1999 14 MOTION by Vardon Golf Co Inc pursuant to Fed.R.Civ.P. 16(a)(3), 16(a)(5) and 26(c) for a scheduling and/or settlement conference, and for a protective order concerning Karsten's patent infringement counterclaims(Attachments); Notice [Date Entered: 10/05/99, By: ar]
- 09/30/1999 = SCHEDULE set on 9/30/99 by Hon. David H. Coar : Noticed motion scheduled for 9:15 10/4/99 No notice [Date Entered: 09/30/99, By: pm]
- 10/01/1999 17 MOTION by Vardon Golf Co Inc pursuant to Fed.R.Civ.). 37(a)(2)(B) to compel Karsten to provide basic discovery in the form of interrogatories and responsive documents (Attachments); Notice [Date Entered: 10/12/99, By: ar]
- 10/04/1999 15 MINUTE ORDER of 10/4/99 by Hon. David H. Coar : Vardon Golf's motion pursuant to FRCP 16(a)(3), 16(a)(5) and 26(c) for a scheduling and/or settlement conference, and for a protective order concerning Karsten's patent infringement counterclaims is referred to the Magistrate Judge, Morton Denlow [14-1] [14-2]. Mailed notice [Date Entered: 10/05/99, By: ar]
- 10/05/1999 = SCHEDULE set on 10/5/99 by Hon. Morton Denlow : Noticed motion set for 10:00 10/7/99 No notice [Date Entered: 10/05/99, By: dmk]
- 10/07/1999 16 MINUTE ORDER of 10/7/99 by Hon. Morton Denlow : Status hearing held and continued to 10:00 am on 11/16/99. Plaintiff's motion to compel Karsten to provide basic discovery is granted with supplemental responses to interrogatories to be prepared on or before 11/15/99. Agreed protective order to be presented on or before 10/14/99. Defendant to produce documents on or before 10/28/99 under the terms of the protective order. In the event there is no protective order, the documents are to be produced on an attorneys-eyes only basis. Plaintiff's motion for a settlement conference is granted [14-1]. The date for settlement will be set on 11/16/99. Parties to exchange demands and offers prior to that date. Notice mailed by Magistrate Judge staff [Date Entered: 10/08/99, By: ar]
- 10/26/1999 19 EMERGENCY MOTION by defendant/ counter-claimant Karsten Mfg Corp for substitution of counsel of law firm of Pugh, Jones and Johnson for the firm of Vedder, Price, Kaufman & Kammholz ; Emergency Notice of Motion [Date Entered: 10/29/99, By: eav]
- 10/26/1999 20 EMERGENCY MOTION AND MEMORANDUM by defendant/ counter-claimant Karsten Mfg Corp to modify the case scheduling order (Attachments) [Date Entered: 10/29/99, By: eav]
- 10/26/1999 23 ATTORNEY APPEARANCE for defendants plaintiff by Walter Jones, Jr., Dennis P. W. Johnson, Stephen H. Pugh and Nicole Feder [Date Entered: 10/29/99, By: eav]
- 10/27/1999 18 RESPONSE by Vardon Golf Co Inc to to Karsten's emergency motion and memorandum to modify the case scheduling order (Attachments) [Date Entered: 10/28/99, By: ar]
- 10/28/1999 21 TRANSCRIPT of proceedings for the following date(s): 9/9/99 Before Honorable Morton Denlow [Date Entered: 10/29/99, By: eav]
- 10/28/1999 22 MINUTE ORDER of 10/28/99 by Hon. David H. Coar : Karsten Manufacturing Corporation's emergency motion for substitution of counsel is granted. Leave granted Walter Jones, Jr., Dennis P. Johnson, Stephen H. Pugh and Nicole Feder to substitute and file appearance as local counsel on behalf of Karsten Manufacturing Corp. Leave granted Vedder, Price, Kaufman & Kammholz to withdraw as local counsel for defendants. [19-1] Karsten's emergency motion and memorandum to modify the case scheduling order is Denied for the reasons stated on the record. [20-1] Mailed notice [Date


- Entered: 10/29/99, By: eav]
- 10/29/1999 25 MOTION by plaintiff, pursuant to Fed.R.Civ.P. 37(a)(2)(B) to compel Karsten to provide timely Rule 30(b)(b) testimony (Attachments); Notice [Date Entered: 11/04/99, By: ar]
- 11/01/1999 24 MINUTE ORDER of 11/1/99 by Hon. David H. Coar : Karsten's emergency motion and memorandum to consolidate related cases is denied for the reasons stated on the record. Mailed notice [Date Entered: 11/03/99, By: ar]
- 11/02/1999 = SCHEDULE set on 11/2/99 by Hon. David H. Coar : Noticed motion scheduled for 9:15 11/3/99 No notice [Date Entered: 11/02/99, By: pm]
- 11/02/1999 27 EMERGENCY MOTION by Karsten Mfg Corp to compel answers to interrogatories and motion for sanctions (Attachments); Notice [Date Entered: 11/05/99, By: ar]
- 11/03/1999 26 MINUTE ORDER of 11/3/99 by Hon. David H. Coar : Vardon's motion to compel is withdrawn [25-1]. Mailed notice [Date Entered: 11/04/99, By: ar]
- 11/03/1999 28 MOTION by Karsten Mfg Corp for protective order; Memorandum in support (Attachments); Notice [Date Entered: 11/05/99, By: ar]
- 11/04/1999 29 MINUTE ORDER of 11/4/99 by Hon. David H. Coar : It is hereby ordered that any further motion that is labeled emergency, filed by Karsten Manufacturing Corporation, must contain an affidavit stating the reasons that deem said motion as an emergency. Karsten's emergency motion to compel answers to interrogatories and motion for sanctions and motion for protective order are denied without prejudice to renewing before the Magistrate Judge [27-1 [27-2] [28-1]. Mailed notice [Date Entered: 11/05/99, By: ar]
- 11/08/1999 32 MOTION by defendant for protective order (Attachments); Notice [Date Entered: 11/16/99, By: ar]
- 11/08/1999 33 MOTION by plaintiff pursuant to Fed.R.Civ.P. 26(c) for a protective order concerning upcoming depositions (Attachments); Notice [Date Entered: 11/16/99, By: ar]
- 11/10/1999 30 MINUTE ORDER of 11/10/99 by Hon. Edward A. Bobrick : Defendant's motion to compel answers to interrogatories is granted in part as stated in open court [17-1]. Parties under a protective order for attorneys' eyes only will exchange the following by 11/11/99: Plaintiff will provide answers to interrogatory #4 relating to conception and reduction to practice dates with supporting documents. Defendant to provide earlier prior art and invention dates as stated in open court. Notice mailed by Magistrate Judge's staff [Date Entered: 11/12/99, By: ar]
- 11/12/1999 31 TRANSCRIPTS of proceedings for the following date(s): 10/28/99 and 11/01/99 before the Honorable David H. Coar (2 vols. #31-1 and #31-2) [Date Entered: 11/15/99, By: ar]
- 11/12/1999 34 MOTION by defendant to compel depositions of Dillis Allen, Irene Allen and Scott Longueil (Attachments); Notice [Date Entered: 11/16/99, By: ar]
- 11/15/1999 35 APPLICATION for leave to appear pro hac vice by Lawrence G. Kurland for Karsten Mfg Corp; Order entered granting leave by Hon. David H. Coar (Attachment) [Date Entered: 11/16/99, By: ar]
- 11/15/1999 36 APPLICATION for leave to appear pro hac vice by Robert G. Lancaster for Karsten Mfg Corp; Order entered granting leave by Hon. Morton Denlow; Notice [Date Entered: 11/16/99, By: ar]
- 11/15/1999 37 MINUTE ORDER of 11/15/99 by Hon. Morton Denlow : Oral arguments held. Defendant's motion for leave to file application to appear pro hac vice is granted. Karsten Manufacturing Corporation's motion to compel depositions of Dillis Allen, Irene Allen and Scott Longueil [34-1] and Vardon Golf's motion for a protective order concerning upcoming depositions [33-1] are withdrawn as moot subject to agreed upon schedule presented in open court. Karsten Manufacturing Corp.'s motion for protective order [32-1] continued to 9:30 am on 11/17/99. Status hearing set for 11/16/99 is reset to 10:00 am on 12/16/99.



- Notice mailed by Magistrate Judge's staff [Date Entered: 11/16/99, By: ar]
- 11/17/1999 38 MINUTE ORDER of 11/17/99 by Hon. Morton Denlow : Defendant Karsten Manufacturing Corporation's motion for protective order is withdrawn [32-1]. No notice [Date Entered: 11/22/99, By: ar]
- 11/19/1999 39 TRANSCRIPT of proceedings for the following date(s): 10/07/99 before the Honorable Morton Denlow (1 vol.) [Date Entered: 11/22/99, By: ar]
- 11/23/1999 = SCHEDULE set on 11/23/99 by Hon. David H. Coar : Noticed motion scheduled for 9:15 11/29/99 No notice [Date Entered: 11/23/99, By: pm]
- 11/23/1999 40 MOTION by plaintiff to substitute the '941 reissue patent into this case upon its issuance (Attachments); Notice [Date Entered: 12/01/99, By: ar]
- 11/26/1999 41 MOTION by defendant for sanctions and to compel deposition and memorandum in support; Notice [Date Entered: 12/01/99, By: ar]
- 11/29/1999 = SCHEDULE set on 11/29/99 by Hon. David H. Coar : Noticed motion scheduled for 9:15 11/20/99 No notice [Date Entered: 11/29/99, By: pm]
- 11/29/1999 42 MINUTE ORDER of 11/29/99 by Hon. David H. Coar : Answer brief to Vardon's motion to substitute the '941 reissue patent into this case upon its issuance [40-1], due within seven (7) days. The motion to substitute is continued to 9:30 am on 12/09/99 [40-1]. Mailed notice [Date Entered: 12/01/99, By: ar]
- 11/30/1999 43 MINUTE ORDER of 11/30/99 by Hon. David H. Coar : Defendant's motion for sanctions and to compel deposition and memorandum in support thereof to be presented before Judge Denlow, pursuant to referral order of all discovery motions [41-1] [41-2]. No notice [Date Entered: 12/01/99, By: ar]
- 11/30/1999 44 MOTION by plaintiff for a protective order (Attachment); Notice [Date Entered: 12/02/99, By: ar]
- 12/01/1999 45 MINUTE ORDER of 12/1/99 by Hon. Morton Denlow : Oral arguments held. Plaintiff's motion for a protective order [44-1] is granted in part and denied in part and summarized as follows: 1. Defendant Karsten shall be allowed to take Mr. William Raymond's deposition on one future occasion as agreed to by the parties. 2. Defendant Karsten shall not be permitted to take any further deposition of Mr. Dillis Allen. Notice mailed by Magistrate Judge's staff [Date Entered: 12/02/99, By: ar]
- 12/02/1999 46 MOTION by plaintiff to compel discovery responses (Attachments); Notice [Date Entered: 12/07/99, By: ar]
- 12/02/1999 48 EXHIBIT E by plaintiff to its motion to compel discovery responses [46-1] (RESTRICTED) [Date Entered: 12/07/99, By: ar]
- 12/03/1999 50 MOTION by defendant for protective order (Attachments); Notice [Date Entered: 12/09/99, By: gk]
- 12/06/1999 47 MINUTE ORDER of 12/6/99 by Hon. Morton Denlow : Oral arguments held. Plaintiff's motion to compel discovery responses [46-1] is granted in part and denied in part as follows: Defendant shall submit supplemental responses to Interrogatory No. 3 by 12/14/99 identifying an element-by-element analysis of the top three items of prior art and listing the top seven additional items of prior art. Plaintiff's motion to compel document discovery is denied as premature. Notice mailed by Magistrate Judge's staff [Date Entered: 12/07/99, By: ar]
- 12/06/1999 49 OPPOSITION by Karsten Mfg Corp to Vardon's motion to substitute the '941 reissue patent into this case upon its issuance [40-1] (Attachments); Notice [Date Entered: 12/08/99, By: ar]
- 12/07/1999 = SCHEDULE set on 12/7/99 by Hon. Morton Denlow : Noticed motion set for 10:30 12/9/99 [Date Entered: 12/07/99, By: dmk]
- 12/07/1999 54 MOTION by Karsten Mfg Corp to substitute exhibits in Karsten's opposition to Vardon's motion to substitute the '941 reissue into this case (Attachments); Notice [Date Entered: 12/14/99, By: ar]






- 12/07/1999 55 MOTION by Vardon Golf Co Inc for an in camera inspection of Karsten's privileged documents and to compel Karsten to produce attorney-client advice regarding Vardon's patents-in-suit (Attachments); Notice [Date Entered: 12/14/99, By: ar]
- 12/08/1999 51 MINUTE ORDER of 12/8/99 by Hon. David H. Coar : Karsten Manufacturing Corporations' motion for protective order is withdrawn [50-1]. No notice [Date Entered: 12/09/99, By: gk]
- 12/09/1999 52 MINUTE ORDER of 12/9/99 by Hon. David H. Coar : Vardon's motion to substitute the '941 reissue patent into this case upon its issuance [40-1] is reset for 9:30 am on 12/21/99. Mailed notice [Date Entered: 12/10/99, By: ar]
- 12/09/1999 56 MOTION by Karsten Mfg Corp to compel F.R.C.P. 30(B)(6) deposition (Attachments); Notice [Date Entered: 12/14/99, By: ar]
- 12/10/1999 = SCHEDULE set on 12/10/99 by Hon. Morton Denlow : Noticed motion set for 9:30 12/13/99 [Date Entered: 12/10/99, By: dmk]
- 12/10/1999 53 REPLY by plaintiff in support of its motion to substitute the '941 reissue patent into this case upon its issuance [40-1] (Attachments) [Date Entered: 12/13/99, By: ar]
- 12/13/1999 57 MINUTE ORDER of 12/13/99 by Hon. David H. Coar : Karsten Manufacturing Corp.'s motion to substitute exhibits in Karsten's opposition to Vardon's motion to substitute the '941 reissue into this case is granted [54-1]. No notice [Date Entered: 12/14/99, By: ar]
- 12/13/1999 58 MINUTE ORDER of 12/13/99 by Hon. Morton Denlow : Defendant Karsten Manufacturing Corp.'s motion to compel F.R.C.P. 30(B)(6) deposition is denied [56-1]. Expert is to summarize Vardon information that he relies upon or provides supplemental documents. Vardon Golf's motion for an in camera inspection of Karsten's privileged documents and to compel Karsten to produce attorney-client advice regarding Vardon's patents-in-suit is denied [55-1] [55-2]. Notice mailed by Magistrate Judge's staff [Date Entered: 12/14/99, By: ar]
- 12/16/1999 = SCHEDULE set on 12/16/99 by Hon. Morton Denlow : Status hearing H&C to 10:00 12/21/99 . Mailed notice [Date Entered: 12/16/99, By: dmk]
- 12/17/1999 59 MOTION by Vardon Golf Co Inc to exclude the untimely reports of Karsten and to bar trial testimony (Attachments); Notice [Date Entered: 12/22/99, By: ar]
- 12/20/1999 60 MEMORANDUM by Karsten Mfg Corp in opposition to Vardon's motion to exclude the untimely reports of Karsten and to bar trial testimony [59-1] [59-2] (Attachments); Notice [Date Entered: 12/22/99, By: ar]
- 12/20/1999 64 MEMORANDUM by defendant in opposition to Vardon's motion to exclude untimely expert reports of Karsten to bar their trial testimony (Attachments); Notice [Date Entered: 12/27/99, By: ip]
- 12/21/1999 61 MINUTE ORDER of 12/21/99 by Hon. Morton Denlow : Status hearing held. For reasons stated in open court, Vardon's motion to exclude the untimely reports of Karsten and to bar trial testimony is denied [59-1] [59-2]. Vardon to provide a date for conception and reduction to practice of the two patents in dispute on or before 01/04/00. Notice mailed by Magistrate Judge's staff [Date Entered: 12/22/99, By: ar]
- 12/21/1999 62 AGREED MOTION by Karsten Mfg Corp for entry of agreed protective order (Attachment); Notice [Date Entered: 12/22/99, By: ar]
- 12/22/1999 63 TRANSCRIPTS of proceedings for the following date(s): 11/10/99 and 11/15/99 before the Honorable Edward A. Bobrick (2 vols. #63-1 and #63-2) [Date Entered: 12/23/99, By: ar]
- 12/23/1999 65 MINUTE ORDER of 12/23/99 by Hon. David H. Coar : Vardon's motion to substitute the '941 reissue patent into this case upon its issuance is denied at this time for the reasons stated on the record [40-1]. Mailed notice [Date Entered: 12/27/99, By: ar]





- 12/27/1999 66 MOTION by defendant to dismiss Vardon's claims under U.S. patent no. 5,301,941 pursuant to Fed. R. Civ. P. 12(c) (Attachments); Notice [Date Entered: 01/03/00, By: ls]
- 12/28/1999 = SCHEDULE set on 12/28/99 by Hon. David H. Coar : Noticed motion scheduled for 9:15 12/30/99 No notice [Date Entered: 12/28/99, By: pm]
- 12/30/1999 67 MINUTE ORDER of 12/30/99 by Hon. David H. Coar : Answer brief to motion to dismiss Vardon's claims under U.S. patent no. 5,301,941 pursuant to Fed. R. Civ. P. 12(c) due 1/20/00 [66-1]. Reply to answer brief due 2/11/00. Mailednotice [Date Entered: 01/03/00, By: ls]
- 12/30/1999 68 TRANSCRIPT of proceedings for the following date(s): 12/21/99 Before Honorable David H. Coar [Date Entered: 01/03/00, By: ls]
- 01/12/2000 69 TRANSCRIPTS of proceedings for the following date(s): before the Honorable 12/13/99 and 12/21/99 (2 vols. #69-1 and #69-2) [Date Entered: 01/12/00, By: ar]
- 01/14/2000 72 MOTION by plaintiff to compel the depositions of Dr. Creighton and Mark Gleason (Attachments); Notice [Date Entered: 01/20/00, By: ar]
- 01/18/2000 = [Date Entered: 01/18/00, By: dmk]
- 01/18/2000 70 MOTION by Karsten Mfg Corp for sanctions for failure to comply with discovery pursuant to Rule 37(b)(2). (RESTRICTED) [Date Entered: 01/19/00, By: ar]
- 01/19/2000 73 MINUTE ORDER of 1/19/00 by Hon. Morton Denlow : Oral arguments held. For the reasons stated in open court, plaintiff Vardon Golf's motion to compel the depositions of Dr. Creighton and Mark Gleason is granted [72-1]. Defendant's oral motion to take supplemental deposition of Mr. Gemini is granted. Parties are to schedule depositions on their own. Vardon Golf's motion to compel production of documents relating to the Pelican lawsuit is denied without prejudice to Vardon raising the issue before the Pelican court. Karsten's motion for sanctions for failure to comply with discovery pursuant to Rule 37(b)(2) is denied [41-1]. Vardon Golf shall file a supplemental answer to Karsten Manufacturing Corp.'s Interrogatory #4 on or before 02/09/00. Notice mailed by Magistrate Judge's staff [Date Entered: 01/20/00, By: ar]
- 01/20/2000 71 TRANSCRIPTS of proceedings for the following date(s): 12/01/99 and 12/06/999 before the Honorable Morton Denlow (2 vols. #71-1 and #71-2) [Date Entered: 01/20/00, By: ar]
- 01/20/2000 74 RESPONSE by plaintiff to Karsten's motion to dismiss Vardon's claims under U.S. patent no. 5,301,941 pursuant to Fed. R. Civ. P. 12(c) [66-1] with motion [Date Entered: 01/24/00, By: ar]
- 01/20/2000 74 CROSS-MOTION by plaintiff for summary judgment with response [Date Entered: 01/24/00, By: ar]
- 01/20/2000 75 RULE 56.1 Statement by plaintiff (Attachments) [Date Entered: 01/24/00, By: ar]
- 02/02/2000 78 MOTION by defendant Karsten Mfg Corp to move date for filing dispositive motions (Attachments); Notice of motion. [Date Entered: 02/09/00, By: dk]
- 02/03/2000 = [Date Entered: 02/03/00, By: pm]
- 02/03/2000 76 RESPONSE by plaintiff to Karsten's motion to move date for filing dispositive motions (Attachments) [Date Entered: 02/04/00, By: bc]
- 02/04/2000 77 MINUTE ORDER of 2/4/00 by Hon. Morton Denlow: Plaintiffs motion for a protective order concerning Karsten's patent-infringement counterclaims is withdrawn as moot. Defendants motion for sanctions and to compel deposition is withdrawn as moot. [41-1] [41-2] No notice [Date Entered: 02/07/00, By: dj]
- 02/07/2000 79 MINUTE ORDER of 2/7/00 by Hon. David H. Coar: Karsten's motion to move date for filing dispositive motions is denied [78-1]. The Markman hearing is reset to 05/19/00 at 10:00a.m. Mailed notice [Date Entered: 02/09/00, By: dk]





- 02/11/2000 80 REPLY by Karsten Mfg Corp to Vardon' response to Karsen's motion to dismiss Vardon's claims under U.S. patent no. 5,301,941 pursuant to Fed. R. Civ. P. 12(c) [66-1] with response (Attachments); Notice (1 vol.) [Date Entered: 02/15/00, By: ar]
- 02/11/2000 80 RESPONSE by Karsten Mfg Corp to Vardon's purported cross-motion for summary judgment [74-1] with reply (Attachments); Notice (1 vol.) [Date Entered: 02/15/00, By: ar]
- 02/14/2000 81 TRANSCRIPT of proceedings for the following date(s): 01/19/00 before the Honorable Morton Denlow (1 vol.) [Date Entered: 02/16/00, By: ar]
- 02/29/2000 82 TRANSCRIPT of proceedings for the following date(s): 02/07/00 before the Honorable David H. Coar (1 vol.) [Date Entered: 03/01/00, By: ar]
- 03/01/2000 83 MOTION by Karsten Mfg Corp for summary judgment of non-infringement and invalidity of the '941 patent; Notice [Date Entered: 03/15/00, By: ar]
- 03/01/2000 87 MOTION by Karsten Mfg Corp for summary judgment of non-infringement and invalidity of the '021 patent; Notice [Date Entered: 03/15/00, By: ar]
- 03/01/2000 88 MOTION by Karsten Mfg Corp for leave to file memoranda in excess of 15 pages; Notice [Date Entered: 03/15/00, By: ar]
- 03/02/2000 84 MEMORANDUM by Karsten Mfg Corp in support of its motion for summary judgment of non-infringement and invalidity of the '941 patent [83-1] with statement (RESTRICTED) [Date Entered: 03/15/00, By: ar]
- 03/02/2000 84 STATEMENT of material facts as to which there are no genuine issue by Karsten Mfg Corp in support of its motion for summary judgment of non-infringement and of invalidity of U.S. Patent No. 5,301,941 with memorandum in support (RESTRICTED) [Date Entered: 03/15/00, By: ar]
- 03/10/2000 85 AMENDED notice of motion by Karsten Mfg Corp regarding its motion for summary judgment of non-infringement and invalidity of the '941 patent [83-1] [Date Entered: 03/15/00, By: ar]
- 03/10/2000 89 TWO AMENDED notices of motion by Karsten Mfg Corp regarding motions for summary judgment of non-infringement and invalidity of the '021 patent [87-1] and for leave to file memoranda in excess of 15 pages [88-1] [Date Entered: 03/15/00, By: ar]
- 03/10/2000 91 MOTION by Vardon Golf Co Inc to compel deposition testimony and for a deferred briefing schedule on Karsten's summary judgment motions, pursuant to Fed.F.Civ.P. 56(f) (Attachments); Notice [Date Entered: 03/16/00, By: ar]
- 03/13/2000 = [Date Entered: 03/13/00, By: dmk]
- 03/14/2000  86 MINUTE ORDER of 3/14/00 by Hon. David H. Coar : Answer brief to Karsten's motion for summary judgment of non-infringement and invalidity of the '941 patent due 04/12/00 [83-1]. Reply to answer brief due 05/04/00. Ruling on Karsten's motion will be by mail [83-1]. Karsten's motion for leave to file memoranda in excess of fifteen (15) pages is granted. Mailed notice [Date Entered: 03/15/00, By: ar]
- 03/14/2000  90 MINUTE ORDER of 3/14/00 by Hon. David H. Coar : Answer brief to Karsten's motion for summary judgment of non-infringement and invalidity of the '021 patent [87-1] due 04/12/00. Reply to answer brief due 05/04/00. Ruling will be by mail [87-1]. Karsten's motion for leave to file memoranda in excess of 15 pages is granted [88-1]. Mailed notice [Date Entered: 03/15/00, By: ar]
- 03/15/2000  92 MINUTE ORDER of 3/15/00 by Hon. Morton Denlow : Oral argument held. Vardon Golf's motion to compel deposition testimony and for a deferred briefing schedule on Karsten's summary judgment motions, pursuant to Fed.F.Civ.P. 56(f)[91-1] [91-2] is granted in part and denied in part as follows: Plaintiffs motion for a deferred schedule is denied without prejudice. Plaintiffs motion to compel deposition testimony of Daniel James




- Kubica is denied, however, Mr. Kubica to file a supplemental affidavit on or before 03/24/00. Plaintiff's motion to compel deposition of Donald L. Creighton is granted. Mr. Creighton to be produced for deposition by Karsten no later than 04/14/00. Notice mailed by Magistrate-Judge's staff [Date Entered: 03/16/00, By: ar]
- 03/23/2000 95 REVISED MEMORANDUM by Karsten Mfg Corp in support of its motion for summary judgment of non-infringement and invalidity of the '021 patent [87-1] (RESTRICTED) [Date Entered: 03/29/00, By: jmp]
- 03/23/2000 96 REVISED MEMORANDUM by Karsten Mfg Corp in support of its motion for summary judgment of non-infringement and invalidity of the '941 patent [83-1] (RESTRICTED) [Date Entered: 03/29/00, By: jmp]
- 03/23/2000 97 NOTICE of filing by Karsten Mfg Corp of revised memorandum [95-1] and revised memorandum [96-1] [Date Entered: 03/29/00, By: jmp]
- 03/24/2000 93 SUPPLEMENTAL AFFIDAVIT of Daniel James Kubica in support of Karsten's motion for summary judgment of non-infringement and invalidity of U.S. Patent No. 5,401,021 [87-1]; Notice of filing. [Date Entered: 03/27/00, By: jmp]
- 03/28/2000 94 TRANSCRIPT of proceedings for the following date(s): 03/15/00. Before Honorable Morton Denlow. [Date Entered: 03/28/00, By: jmp]
- 04/11/2000 101 MOTION by defendant, counter-claimant for leave to file second supplemental affidavit of Daniel Kubica and to amend (1) its statement of material facts, and (2) memorandum in support of motion for summary judgment of non-infringement and invalidity of U.S. Patent No. 5,401,021 (Exhibits) ; Notice of motion [Date Entered: 04/19/00, By: jmp]
- 04/12/2000 98 RESPONSE by Vardon Golf Co Inc to Karsten's motion for summary judgment of non-infringement and invalidity of the '021 patent [87-1] and cross-motion for summary judgment of infringement of claim 3 of the '021 patent. (RESTRICTED) [Date Entered: 04/13/00, By: jmp]
- 04/12/2000 98 CROSS-MOTION by Vardon Golf Co Inc for summary judgment of infringement of claim 3 of the '021 patent and response to Karsten's motion for summary judgment of non-infringement and invalidity of the '021 patent. (RESTRICTED) [Date Entered: 04/13/00, By: jmp]
- 04/12/2000 99 RULE 56.1 RESPONSE by Vardon Golf Co Inc to Karsten's statement of material facts as to which there is no genuine issue in support of its motion for summary judgment of infringement of invalidity of U.S. Patent No. 5,401,021 and in support of Vardon's cross-motion for summary judgment of infringement of '021 claim 3 (Exhibits). (RESTRICTED) [Date Entered: 04/13/00, By: jmp]
- 04/12/2000 99 MEMORANDUM by Vardon Golf Co Inc in support of cross-motion for summary judgment of infringement of claim 3 of the '021 patent [98-1] and Rule 56.1 response to Karsten's statement of material facts as to which there is no genuine issue in support of its motion for summary judgment of non-infringement and of invalidity of U. S. Patent No. 5,401,021 (Exhibits) [Date Entered: 04/13/00, By: jmp]
- 04/12/2000  100 MINUTE ORDER of 4/12/00 by Hon. Morton Denlow : Telephonic conference call held. Karsten's emergency motion for protective order. Oral argument held. Karsten's emergency motion for a protective order is granted [62-1]. Vardon to proceed with the deposition of Dr. Donald Creighton today or be barred from taking his deposition at a later date. The physical exhibits referred to in Tab C of Dr. Donald Creighton's report which have not previously been produced shall be made available for physical examination by Vardon's counsel at a mutually convenient place on or before 04/26/00. Notices mailed by judge's staff [Date Entered: 04/13/00, By: jmp]
- 04/13/2000 102 COMBINED MOTION by plaintiff, counter-defendant for leave to file over length briefs in response to Karsten's motions for summary judgment













- concerning infringement and validity concerning the '941 and '021 patents ;
Notice of motion [Date Entered: 04/19/00, By: jmp]
- 04/14/2000 = [Date Entered: 04/14/00, By: pm]
- 04/17/2000  103 MINUTE ORDER of 4/17/00 by Hon. David H. Coar : Karsten's motion for leave to file second supplemental affidavit of Daniel Kubica [101-1] and to amend (1) its statement of material facts is granted. Leave granted to Vardon to file a response by 04/17/00. Vardon's combined motion for leave to [102-1] file over length briefs in response to Karsten's motions for summary judgment concerning infringement and validity concerning the '941 '021 patents is denied [102-2]. Mailed notice [Date Entered: 04/19/00, By: jmp]
- 04/17/2000 104 MOTION by defendant, counter-claimant to strike and for sanctions under Rule 11 due to Vardon's conduct in connection with its untimely filing of a brief (Exhibits); Notice of filing. [Date Entered: 04/21/00, By: jmp]
- 04/17/2000 105 MOTION by defendant, counter-claimant to strike Vardon's cross-motn for summary judgment of infringement of claim 3 of the '021 patent (Exhibit); Notice of motion [Date Entered: 04/21/00, By: jmp]
- 04/19/2000 109 COMBINED MOTION by plaintiff, counter-defendant for leave to file over length briefs in response to Karsten's motions for summary judgment concerning infringement and validity concerning the '941 and '021 patents ; Notice of motion [Date Entered: 04/25/00, By: jmp]
- 04/20/2000  106 MINUTE ORDER of 4/20/00 by Hon. David H. Coar : Karsten's motion to strike Vardon's cross-motn for summary judgment of infringement of claim 3 of the '021 patent is denied [105-1]. Karsten's motion to strike [104-1] and for sanctions under Rule 11 due to Vardon's conduct in connection with its untimely filing of a brief is denied [104-2]. The movant may address these issues in its briefs in connection with the summary judgment motions.s. Karsten to file answer brief to the summary judgment motions of infringement of claim 3 of the '021 patent [98-1]; motion for summary judgment [74-1] by 04/24/00. Karsten to file reply brief to motion for summary judgment of non-infringement and invalidity of the '021 patent [87-1]; motion for summary judgment of non-infringement and invalidity of the '941 patent [83-1] within twenty-one (21) days by 05/16/00. Mailed notice [Date Entered: 04/21/00, By: jmp]
- 04/20/2000 107 REVISED RESPONSE by plaintiff, counter-defendant to Karsten's motion for summary judgment of non-infringement and invalidity of the '941 patent [83-1] and Rule 56.1 revised response to "Karsten's statement of material facts to which there is no genuine issue in support of its motion for summary judgment of non-infringement and of invalidity of U. S. Patent No. 5,401,941" (RESTRICTED) [Date Entered: 04/21/00, By: jmp]
- 04/20/2000 107 RULE 56.1 Revised Statement of material facts as to which there are no genuine issues in support of its motion for summary judgment of non-infringement and of invalidity of U. S. Patent No. 5,401,941 and revised response to Karsten's motion for summary judgment of non-infringement and invalidity of the '941 patent by plaintiff, counter-defendant (RESTRICTED) [Date Entered: 04/21/00, By: jmp]
- 04/20/2000 108 REVISED RESPONSE by plaintiff, counter-defendant to Karsten's motion for summary judgment of non-infringement and invalidity of the '021 patent [87-1] and cross-motion for summary judgment of infringement of claim 3 of the '021 patent and Revised response to "Karsten's statement of material facts as to which there is no genuine issue in support of its motion for summary judgment of non-infringement and of invalidity of U. S. Patent No. 5,401,021 (Exhibits) (Attachments) (RESTRICTED) [Date Entered: 04/21/00, By: jmp]
- 04/20/2000 111 MOTION by Karsten Mfg Corp for clarification of the issues properly before this court regarding claim 3 of the '021 patent ; Notice of motion [Date Entered: 04/26/00, By: jmp]












- 04/24/2000 = [Date Entered: 04/24/00, By: pm]
- 04/24/2000  110 MINUTE ORDER of 4/24/00 by Hon. David H. Coar : Vardon's combined motion for leave to [109-1] file over length in response to Karsten's motions for summary judgment concerning infringement and validity concerning the '941 and '021 patents is granted [109-2]. Mailed notice [Date Entered: 04/25/00, By: jmp]
- 04/25/2000  112 MINUTE ORDER of 4/25/00 by Hon. David H. Coar : Karten's motion for clarification of the issues properly before this court regarding claim 3 of the '021 patent is denied [111-1]. No notice [Date Entered: 04/26/00, By: jmp]
- 04/27/2000 114 MOTION by plaintiff, counter-defendant to correct its revised response to Karsten's motion for summary judgment of non-infringement and invalidity of the '021 patent (Exhibits); Notice of motion [Date Entered: 05/08/00, By: jmp]
- 04/28/2000 113 OPPOSITION by defendant, counter-claimant to Vardon's motion to correct its revised response to Karsten's motions for summary judgment (Exhibits) [Date Entered: 05/02/00, By: jmp]
- 05/02/2000 = [Date Entered: 05/02/00, By: pm]
- 05/02/2000 = SCHEDULE set on 5/2/00 by Hon. David H. Coar : Markman hearing scheduled for May 19, 2000 is stricken pending ruling on the summary judgment motions. Mailed notice [Date Entered: 05/02/00, By: pm]
- 05/08/2000  115 MINUTE ORDER of 5/8/00 by Hon. David H. Coar : Vardon's motion to correct its revised response to Karsten's motion for summary judgment of non-infringement and invalidity of the '021 patent [114-1] is entered and continued to 9:30a.m. on 05/10/00. Mailed notice [Date Entered: 05/08/00, By: jmp]
- 05/10/2000  116 MINUTE ORDER of 5/10/00 by Hon. David H. Coar : Defendant's opposition to plaintiff's motion memorandum [113-1] is overruled. Vardon's motion to correct its revised response to Karsten's motion for summary judgment of non-infringement and invalidity of the '021 patent is granted [114-1]. No notice [Date Entered: 05/11/00, By: jmp]
- 05/16/2000 117 REPLY by defendant, counter-claimant to Vardon's response to motion for summary judgment of non-infringement and invalidity of the '021 patent [87-1] and reply in support of its motion for summary judgment of non-infringement and invalidity of the '941 patent [83-1] and motion to strike and/or dismiss, or in the alternative, memorandum in opposition to Vardon's cross-motion for summary judgment of infringement of claim 3 of the '021 (RESTRICTED) [Date Entered: 05/17/00, By: jmp]
- 05/16/2000 117 MOTION by defendant, counter-claimant to strike and/or dismiss, or in the alternative, memorandum in opposition to Vardon's cross-motion for summary judgment of infringement of claim 3 of the '021 ; (RESTRICTED) [Date Entered: 05/17/00, By: jmp]
- 05/16/2000 117 MEMORANDUM by defendant, counter-claimant in opposition to Vardon's cross-motion for summary judgment of infringement of claim 3 of the '021 patent [98-1] (RESTRICTED) [Date Entered: 05/17/00, By: jmp]
- 05/16/2000 118 RESPONSE by defendant, counter-claimant to Vardon's further Rule 56.1 statement of undisputed facts in support of its cross-motion for summary judgment of infringement of claim 3, and in support of the denial of Karsten's motion; Notice of filing. [Date Entered: 05/18/00, By: jmp]
- 05/17/2000  119 MINUTE ORDER of 5/17/00 by Hon. Morton Denlow : All matters relating to the referral of this action having been resolved, the case is returned to the assigned judge. Terminating the case referral to Hon. Morton Denlow. Notices mailed by judge's staff [Date Entered: 05/18/00, By: jmp]
- 05/22/2000 120 REPLY by plaintiff, counter-defendant in support of its cross-motion for summary judgment of infringement of claim 3 of the '021 patent [98-1] (Exhibits) [Date Entered: 05/23/00, By: jmp]
















- 05/22/2000 121 MOTION by plaintiff, counter-defendant to strike new matter raised in Karsten's summary judgment reply briefs (Exhibit); [Date Entered: 05/23/00, By: jmp]
- 06/02/2000 122 MEMORANDUM by defendant, counter-claimant in opposition to motion to strike new matter raised in Karsten's summary judgment reply briefs [121-1] (Exhibits); Notice of filing. [Date Entered: 06/05/00, By: jmp]
- 06/02/2000 123 MOTION and memorandum by defendant, counter-claimant for leave to file one additional exhibit in support of its motion for summary judgment of non-infringement and invalidity of the '941 patent (Attachments); Notice of motion [Date Entered: 06/08/00, By: jmp]
- 06/07/2000  124 MINUTE ORDER of 6/7/00 by Hon. David H. Coar : Objections are overruled and Karsten's combined motion and memorandum for leave to supplement evidence by filing one additional exhibit in support of its motion for summary judgment of non-infringement and invalidity of the '941 patent is granted [123-1]. Mailed notice [Date Entered: 06/08/00, By: jmp]
- 06/07/2000 128 MOTION by plaintiff, counter-defendant for clarification, and reconsideration of the court's 06/07/00 ruling or, in the alternative, for discovery concerning Karsten's new prior art (Exhibits); Notice of motion. [Date Entered: 06/12/00, By: jmp]
- 06/08/2000 125 TRANSCRIPT of proceedings for the following date(s): 03/14/00. Before Honorable David H. Coar. [Date Entered: 06/09/00, By: jmp]
- 06/08/2000 126 TRANSCRIPT of proceedings for the following date(s): 04/20/00. Before Honorable David H. Coar. [Date Entered: 06/09/00, By: jmp]
- 06/09/2000 127 MEMORANDUM by defendant, counter-claimant in opposition to Vardon's motion for clarification and reconsideration of the court's June 7, 2000 ruling (Attachments); Notice of filing. [Date Entered: 06/09/00, By: jmp]
- 06/12/2000  129 MINUTE ORDER of 6/12/00 by Hon. David H. Coar : Motion for clarification [128-1] and reconsideration of the court's 06/07/00 ruling [128-2] or, in the alternative for discovery concerning Karsten's new prior art is denied [128-3]. Mailed notice [Date Entered: 06/13/00, By: jmp]
- 06/15/2000 130 TRANSCRIPT of proceedings for the following date(s): 06/07/00. Before Honorable David H. Coar. [Date Entered: 06/15/00, By: jmp]
- 06/15/2000 131 TRANSCRIPT of proceedings for the following date(s): 06/12/00. Before Honorable David H. Coar. [Date Entered: 06/15/00, By: jmp]
- 07/13/2000 132 EMERGENCY MOTION by plaintiff, counter-defendant for clarification of dates for pretrial order and pretrial conference ; Notice of filing. [Date Entered: 07/17/00, By: jmp]
- 07/17/2000  133 MINUTE ORDER of 7/17/00 by Hon. David H. Coar : Vardon's emergency motion for clarification of dates for pretrial order and pretrial conference is granted [132-1]. All dates, the pretrial order deadline, pretrial conference and trial dates are all stricken pending the ruling on the summary judgment motions. Mailed notice [Date Entered: 07/17/00, By: jmp]
- 09/07/2000  134 MINUTE ORDER of 9/7/00 by Hon. David H. Coar : For the reasons stated in the attached memorandum opinion and order, Karsten's motion for summary judgment is granted in part and denied in part [74-1]. The Court Grants Karsten's motion on Claim 3 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents; Grants Karsten's motion on Claim 4 and Claim 5 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents; Grants Karsten's motion on Claim 7 for non-infringement with respect to literal infringement; denies Karsten's motion on Claim 7 with respect to infringement under the doctrine of equivalents; grants Karsten's motion for summary judgment on Claim 8 for non-infringement with respect to literal infringement. Denies Karsten's motion on Claim 8 with respect to infringement under the doctrine of equivalents; Grants Karsten's motion on












- Claim 12 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents. Denies Karsten's motion on claim 14 and Claim 15 for non-infringement with respect to both literal infringement and infringement under the doctrine of equivalents; and denies Karsten's motion for judgment with respect to its invalidity defense on the '021 patent. With respect to the '941 patent, the court grants Karsten's motion for summary judgment on Claims 12 and 15 with respect to both literal infringement and infringement under the doctrine of equivalents. Entered Memorandum Opinion and Order. Mailed notice [Date Entered: 09/13/00, By: jmp]
- 09/20/2000 137 MOTION by defendant Karsten Mfg Corp for reconsideration of the Court's 9/7/00 order; Memorandum in support; Notice. [Date Entered: 09/27/00, By: mf]
- 09/22/2000 135 RESPONSE by defendant, counter-defendant to Karsten's motion for reconsideration of the Court's 09/07/00 order (Exhibits) [Date Entered: 09/24/00, By: jmp]
- 09/26/2000 136 REPLY by defendant, counter-claimant in support of its motion for reconsideration of the court's 09/07/00 order; Notice of filing. [Date Entered: 09/27/00, By: jmp]
- 09/27/2000  138 MINUTE ORDER of 9/27/00 by Hon. David H. Coar : For the reasons stated on the record, Karsten's motion for reconsideration of the Court's order of 9/7/00 is denied [137-1]. No notice [Date Entered: 09/27/00, By: mf]
- 10/02/2000 139 MINUTE ORDER of 10/2/00 by Hon. David H. Coar : In light of this Court's decision regarding Karsten's motion for summary judgment on all claims related to U. S. Patent No. 5,301,941, [#74]. Karsten's motion for judgment on the pleadings of Vardon's claims under U.S. patent no. 5,301,941 pursuant to Fed. R. Civ. P. 12(c) is denied [66-1] as moot. Mailed notice [Date Entered: 10/04/00, By: jmp]
- 10/13/2000 142 MOTION by plaintiff, counter-defendant to set a trial date; Notice of filing. [Date Entered: 10/25/00, By: jmp]
- 10/19/2000 140 MEMORANDUM IN RESPONSE by defendant, third-party plaintiff to Vardon's motion seeking the earliest possible trial date; Notice of filing. [Date Entered: 10/20/00, By: jmp]
- 10/19/2000 141 NOTICE by plaintiff, counter-defendant of related decision from this court (Attachments) [Date Entered: 10/20/00, By: jmp]
- 10/23/2000  143 MINUTE ORDER of 10/23/00 by Hon. David H. Coar : Vardon's motion to set a trial date [142-1] is entered and continued to 9:15 a.m. on 10/26/00. Mailed notice [Date Entered: 10/25/00, By: jmp]
- 10/26/2000  144 MINUTE ORDER of 10/26/00 by Hon. David H. Coar : Vardon's motion to set a trial date is granted [142-1], the parties will be notified by mail of said date. Mailed notice [Date Entered: 10/27/00, By: jmp]
- 03/14/2001  145 MINUTE ORDER of 3/14/01 by Hon. David H. Coar : The following documents, motion to strike [117-1] and dismiss [117-2]. Motion to strike new matter raised in Karsten's summary judgment reply briefs [121-1], all are moot and terminated in light of the court's decision [doc #134] entered 09/07/00. Mailed notice [Date Entered: 03/15/01, By: jmp]
- 05/25/2001 146 MOTION by plaintiff, counter-defendant to partially vacate the court's memorandum opinion and order dated 09/07/00 (Attachments); Notice [Date Entered: 06/01/01, By: jmp]
- 05/25/2001 147 NOTICE by plaintiff, counter-defendant of motion to partially vacate the court's memorandum opinion and order dated 09/07/00 [146-1] [Date Entered: 06/01/01, By: jmp]
- 05/30/2001 148 MEMORANDUM by defendant in opposition to motion to Vardon's motion to partially vacate the court's memorandum opinion and order dated 09/07/00 [146-1] (Attachments); Notice [Date Entered: 06/01/01, By: jmp]













- 05/31/2001  149 MINUTE ORDER of 5/31/01 by Hon. David H. Coar : After reviewing Vardon's motion and the Karsten's memorandum in opposition, Vardon's motion to partially vacate the court's memorandum opinion and order dated 09/07/00 is denied in its entirety [146-1]. Mailed notice [Date Entered: 06/01/01, By: jmp]
- 06/05/2001 150 MOTION by plaintiff, counter-defendant to substitute the '950 reissue patent into the case (Attachments); Notice [Date Entered: 06/15/01, By: jmp]
- 06/11/2001 151 MEMORANDUM by defendant, counter-claimant, third-party plaintiff in opposition to Vardon's motion to substitute the '950 reissue patent into this case [150-1] (Attachments); Notice [Date Entered: 06/15/01, By: jmp]
- 06/11/2001 152 MOTION by defendant, counter-claimant, third-party plaintiff to reconsider summary judgment of the '021 patent in light of new law (Attachments); Notice [Date Entered: 06/15/01, By: jmp]
- 06/11/2001 153 EXHIBITS by defendant, counter-claimant, third-party plaintiff to Karsten's memorandum in support of its motion to reconsider summary judgment of the '021 patent in light of new law [152-1] (Attachments) [Date Entered: 06/15/01, By: jmp]
- 06/14/2001  154 MINUTE ORDER of 6/14/01 by Hon. David H. Coar : Answer brief to motion to reconsider summary judgment of the '021 patent in light of new law [152-1] due 06/28/01. Ruling on defendant's motion to reconsider summary judgment of the '021 patent will be by mail. Plaintiff's motion to substitute the '950 reissue patent into the case [150-1] is taken under advisement - ruling to issue by mail. Mailed notice [Date Entered: 06/15/01, By: jmp]
- 06/15/2001 155 MOTION by plaintiff, counter-defendant to inspect physical exhibits filed with the court (Attachments); Notice [Date Entered: 06/22/01, By: jmp]
- 06/20/2001 156 MINUTE ORDER of 6/20/01 by Hon. David H. Coar : Vardon's motion to inspect physical exhibits filed with the court is withdrawn [155-1]. Telephoned notice [Date Entered: 06/22/01, By: jmp]
- 06/25/2001 157 TRANSCRIPT of proceedings for the following date(s): 05/31/01 before Honorable David H. Coar. [Date Entered: 06/26/01, By: jmp]
- 06/27/2001 158 RESPONSE by plaintiff Vardon Golf to Karsten's motion to reconsider summary judgment of the '021 patent in light of new law [152-1] (Attachments). [Date Entered: 06/28/01, By: eb]
- 06/27/2001 159 EXHIBIT M by Vardon Golf Co Inc (RESTRICTED) [Date Entered: 06/28/01, By: rm]
- 06/28/2001 160 NOTICE by defendant of filing of Judge Kocoras' 6/21/01 ruling (Attachments) ; Notice [Date Entered: 06/29/01, By: ls]
- 06/29/2001 163 MOTION and Memorandum by defendant, counter-claimant, third-party plaintiff Karsten Mfg Corp for leave to file amended and new affidavits (Attachments); Notice [Date Entered: 07/11/01, By: jmp]
- 07/02/2001 161 AFFIDAVIT of Robert Farino; Notice [Date Entered: 07/03/01, By: jmp]
- 07/03/2001 162 RESPONSE by plaintiff, counter-defendant to Karsten's motion for leave to file amended and new affidavits, and alternative Rule 56(f) request (Attachment) [Date Entered: 07/06/01, By: jmp]
- 07/05/2001 164 AMENDED NOTICE by defendant Karsten Mfg Corp, counter-claimant Karsten Mfg Corp, third-party plaintiff Karsten Mfg Corp motion for leave to file amended and new affidavits [163-1] [Date Entered: 07/11/01, By: jmp]
- 07/09/2001 166 MOTION by defendant, counter-claimant Karsten Mfg Corp for leave to file reply memorandum instant (Attachments); Notice [Date Entered: 07/13/01, By: jmp]
- 07/10/2001  165 MINUTE ORDER of 7/10/01 by Hon. David H. Coar : Karsten's motion for leave to file amended and new affidavits is denied [163-1] for reasons stated on the record. Mailed notice [Date Entered: 07/11/01, By: jmp]















- 07/12/2001  167 MINUTE ORDER of 7/12/01 by Hon. David H. Coar : Karsten's motion for leave to file reply memorandum instanter is denied [166-1]. No notice [Date Entered: 07/13/01, By: jmp]
- 08/09/2001 170 MOTION by Vardon Golf Co Inc. to compel production of a settlement agreement from Karsten (Attachments); Notice. [Date Entered: 08/23/01, By: tlm]
- 08/15/2001 168 ATTORNEY APPEARANCE for Karsten Mfg Corp by Carole A. Corns. [Date Entered: 08/16/01, By: aew]
- 08/15/2001 169 MEMORANDUM by Karsten Mfg Corp in opposition to Vardon's motion to compel production of a settlement agreement from Karsten (Attachments). [Date Entered: 08/16/01, By: aew]
- 08/16/2001  171 MINUTE ORDER of 8/16/01 by Hon. David H. Coar : Varden's motion to compel production of a settlement agreement from Karsten is denied [170-1]. No notice [Date Entered: 08/23/01, By: tlm]
- 08/31/2001 172 TRANSCRIPT of proceedings for the following date(s): 07/10/01 before Honorable David H. Coar. [Date Entered: 09/04/01, By: jmp]
- 03/12/2002  173 MINUTE ORDER of 3/12/02 by Hon. David H. Coar : For the reasons stated in the attached memorandum opinion and order, Vardon's motion to substitute the '951 patent into the case is denied in its entirety [150-1]. EnteredMemorandum Opinion and Order. Mailed notice by judge's staff. [Date Entered: 03/14/02, By: jmp]
- 03/12/2002  174 MINUTE ORDER of 3/12/02 by Hon. David H. Coar : For the reasons stated in the attached memorandum opinion and order, Karsten's motion for reconsideration of this court's 09/07/01 summary judgment of the 5,401,021 patent in lightof new law is granted in part and denied in part [152-1]. Entered Memorandum Opinion and Order. Mailed notice [Date Entered: 03/14/02, By: jmp]
- 03/13/2002 = SCHEDULE set on 3/13/02 by Hon. David H. Coar : Final Pretrial order to be submitted on 6/1/02. Final Pretrial conference set to 11:00 6/14/02. Jury trial set to 10:00 7/15/02. Mailed notice [Date Entered: 03/13/02, By: pm]
- 04/04/2002 = SCHEDULE set on 4/4/02 by Hon. David H. Coar : pretrial conference reset to 11:00 6/21/02 Mailed notice [Date Entered: 04/04/02, By: pm]
- 05/09/2002  176 MOTION by defendant Karsten Mfg Corp for hearing on claim construction and Supporting memorandum; Amended notice. [Date Entered: 05/16/02, By: nf]
- 05/13/2002  175 RESPONSE by plaintiff to defendant's motion for hearing on claim construction (Attachments). [Date Entered: 05/15/02, By: sb]
- 05/15/2002  177 MINUTE ORDER of 5/15/02 by Hon. David H. Coar : Karsten Manufacturing Corporation's motion for hearing on claim construction [176-1] and Vardon's response [175-1] are taken under advisement- the Court will rule by mail. Mailednotice [Date Entered: 05/16/02, By: nf]
- 05/15/2002  178 RESPONSE by Vardon Golf Co Inc to Karsten's motion to compel discovery (Attachments). [Date Entered: 05/16/02, By: hb]
- 05/15/2002  179 REPLY by Karsten Mfg Corp to Vardon's response to motion for hearing on claim construction [176-1]; Notice. [Date Entered: 05/16/02, By: hb]
- 05/20/2002  180 MOTION by plaintiff to strike response to Karsten's motion to compel discovery. [Date Entered: 05/22/02, By: mw]
- 05/28/2002  181 MOTION by plaintiff, counter-defendant in limine regarding various pretrial issues (Attachments); (M.I.L. 1 through 4) [Date Entered: 05/29/02, By: jmp]
- 05/28/2002  182 MOTION by plaintiff, counter-defendant in limine regarding various pretrial issues (Attachments); (M.I.L. 5 through 10). [Date Entered: 05/29/02, By: jmp]
- 05/28/2002 183 TRANSCRIPT of proceedings for the following date(s): 05/15/02 before

















- Honorable David H Coar. [Date Entered: 05/30/02, By: jmp]
- 05/31/2002  190 MOTION by plaintiff, counter-defendant for reconsideration of the doctrine of equivalents issue as to '021 patent claims 7-8 and 14-15 in light of the Supreme court's 05/28/02 Festo decision (Attachments); Notice. [Date Entered: 06/07/02, By: jmp]
- 06/03/2002  184 MOTION by defendant in limine to preclude any evidence or allegations that claims 14 and 15 of the '021 patent contain errors and memorandum in support thereof; Notice. [Date Entered: 06/06/02, By: sb]
- 06/03/2002  185 MOTION by defendant in limine to preclude plaintiff from introducing the deposition transcript of David Wright, and memorandum in support thereof, (Attachment); Notice. [Date Entered: 06/06/02, By: sb]
- 06/03/2002 186 MOTION by defendant in limine to preclude any assertion or argument that defendant's sales of the accused products constitutes evidence of nonobviousness, and memorandum in support thereof; Notice. (RESTRICTED). [Date Entered: 06/06/02, By: sb]
- 06/03/2002  187 MOTION by defendant in limine to preclude plaintiff from using the court's statements regarding the accused product in its summary judgment order, and memorandum in support thereof; Notice. [Date Entered: 06/06/02, By: sb]
- 06/03/2002 188 MOTION by defendant in limine to exclude evidence of sales and alleged damages occurring prior to plaintiff's complaint, and memorandum in support; Notice. (RESTRICTED). [Date Entered: 06/06/02, By: sb]
- 06/04/2002  194 MOTION by defendant, counter-claimant, third-party plaintiff to preclude Vardon Trial Exhibits or, in the alternative, for leave to file objections and rebuttal evidence to Vardon's pretrial submission if necessary(Attachment); Notice. [Date Entered: 06/14/02, By: jmp]
- 06/05/2002  189 RESPONSE by plaintiff, counter-defendant to preclude Vardon trial exhibits, et al. (Attachments). [Date Entered: 06/06/02, By: jmp]
- 06/06/2002  191 MEMORANDUM by defendant, counter-claimant in opposition to Vardon's motion for reconsideration of the doctrine of equivalents issue as to '021 patent claims 7-8 and 14-15 [190-1]; Notice. [Date Entered: 06/07/02, By: jmp]
- 06/06/2002  192 MINUTE ORDER of 6/6/02 by Hon. David H. Coar : Karsten having filed a response to Vardon's motion for reconsideration of the doctrine of equivalents issue as to '021 patent claims 7-8 and 14-15 in light of the Supremecourt's 05/28/02 Festo decision [190-1] is taken under advisement - ruling to issue by mail. Mailed notice [Date Entered: 06/07/02, By: jmp]
- 06/12/2002 193 APPLICATION for leave to appear pro hac vice for defendant by Kenneth Lee Marshall; Order entered granting leave by Hon. David H. Coar. [Date Entered: 06/13/02, By: hb]
- 06/13/2002  195 MINUTE ORDER of 6/13/02 by Hon. David H. Coar : Pretrial conference re-set for 10:00 a.m. on 06/28/02. Karsten's motion to preclude Vardon Trial Exhibits [194-1] or, in the alternative, for leave to file objections and rebuttalevidence to Vardon's pretrial submission if necessary [194-2] is continued to 10:00 a.m. on 06/28/02. Motion to strike response to Karsten's motion to compel discovery is granted [180-1] Vardon's response to Karsten's motion to compel discovery is stricken form this docket. (the document has been properly filed in case #99 C 6934)[178-1]. Mailed notice [Date Entered: 06/14/02, By: jmp]
- 06/21/2002  196 RESPONSE by plaintiff, counter-defendant to Karsten's motion in limine to exclude evidence of sales and alleged damages occurring prior to plaintiff's complaint [188-1]. [Date Entered: 06/24/02, By: jmp]
- 06/21/2002  197 RESPONSE by plaintiff, counter-defendant to Karsten's motion in limine to preclude plaintiff from using the court's conclusions regarding the accused product in its summary judgment order [187-1]. [Date Entered: 06/24/02,















- By: jmp]
- 06/21/2002  198 RESPONSE by plaintiff, counter-defendant to Karsten's motion in limine to preclude any assertion or argument that defendant's sales of the accused products constitutes evidence of nonobviousness [186-1]. [Date Entered: 06/24/02, By: jmp]
- 06/21/2002  199 RESPONSE by plaintiff, counter-defendant to Karsten's motion in limine to preclude plaintiff from introducing the transcript of David Wright [185-1] (Attachment). [Date Entered: 06/24/02, By: jmp]
- 06/21/2002  200 RESPONSE by plaintiff, counter-defendant to Karsten's motion in limine to preclude Vardon from presenting any evidence or allegations that claims 14 and 15 of the '021 patent contain errors [184-1], [Date Entered: 06/24/02, By: jmp]
- 06/21/2002  201 MOTION by plaintiff, counter-defendant in limine to preclude Karsten's new damage theory (Attachments). [Date Entered: 06/24/02, By: jmp]
- 06/24/2002 = SCHEDULE set on 6/24/02 by Hon. David H. Coar : Pursuant to the request of the defendant ("parties have mutually agreed"), the Final Pretrial conference is reset to 10:00 7/1/02. Telephone notice [Date Entered: 06/24/02, By: pm]
- 06/26/2002  202 OPPOSITION by defendant, third-party plaintiff, counter-claimant to Vardon's motion in limine to preclude Karsen from arguing that damages did not accrue until the filing date of this lawsuit (Attachment). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  203 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine incident to Karsten's pretrial order submissions [181-1], [182-1] (Attachments). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  204 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 1 to exclude prior art and witnesses (Attachments). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  205 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 2 to exclude untimely expert testimony (Attachments). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  206 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 3 to exclude expert testimony by Donald Creighton (Attachment). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  207 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 4 to exclude expert testimony by Dalbert Shefte (Attachment). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  208 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 5 to exclude Spectrum and Shear-line (Gold Insignia) Clubs (Attachments). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  209 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 6 to exclude arguments at trial inconsistent with the court's summary judgment order. [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  210 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 7 to exclude Karsten's charge of inequitable conduct (Attachments). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  211 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to Vardon's motion in limine No. 8 concerning improper use of hindsight in deciding the question of patent validity (Attachments). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  212 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in









- opposition to Vardon's motion in limine No. 9 to preclude testimony comparing the specification and preferred embodiments of Vardon's 7021 patent to the accused Karsten Golf Clubs (Attachments). [Date Entered: 06/27/02, By: jmp]
- 06/26/2002  213 MEMORANDUM by defendant, third-party plaintiff, counter-claimant in opposition to motion in limine No. 10 to exclude references to irrelevant matters. [Date Entered: 06/27/02, By: jmp]
- 06/27/2002  214 MINUTE ORDER of 6/27/02 by Hon. David H. Coar : For the reasons stated in the attached Memorandum Opinion and Order, Vardon's motion for reconsideration of the court's 03/12/02 summary judgment determination with respect to U.S. Patent 5,401,021 claims 7-8 and 14-15 is granted [190-1] and Karsten's motion for hearing on claim construction is denied [176-1]. Entered Memorandum Opinion and Order. Telephoned notice [Date Entered: 06/28/02, By: jmp]
- 06/27/2002  215 NOTICE by Karsten Mfg Corp of withdrawal of certain exhibits and witnesses (Attachments). [Date Entered: 07/01/02, By: cv]
- 06/27/2002  217 MOTION by Karsten Mfg Corp to strike Vardon's motion in limine to preclude Karsten's new damage theory with memorandum (Attachment); Notice. [Date Entered: 07/01/02, By: cv]
- 06/27/2002 217 MEMORANDUM by Karsten Mfg Corp in opposition to Vardon's motion in limine to preclude Karsten's new damage theory with motion (Attachment); Notice. [201-1] [Date Entered: 07/01/02, By: cv]
- 06/28/2002  216 ATTORNEY APPEARANCE for Karsten Mfg Corp by Dennis P.W. Johnson. [Date Entered: 07/01/02, By: cv]
- 07/01/2002  218 MINUTE ORDER of 7/1/02 by Hon. David H. Coar : In the attached motions in limine, the court has ruled on both parties' motions in limine. With respect Vardon Golf's motion in limine incident to Karsten's pretrial ordersubmissions, the plaintiff must provide a brief as the issue of allowable affirmative defenses (abandonment, enablement, best mode, written description, indefiniteness, and laches) by close of business, Tuesday, 7/2/02. The defendant must respond by end of the business day, Monday, 7/7/02. In addition, Karsten must supply Vardon with a brief on the issue of additional estoppel arguments under the doctrine of equivalents by the end of the business day, Friday, 7/5/02 and must the supply the court with this same brief on Monday, 7/8/02. Vardon must submit a reply to this court by 7/10/02. Trial is set for Monday, 7/15/02 at 9:00 a.m. (Entered motions in limine). Mailed notice [Date Entered: 07/08/02, By: cm]
- 07/01/2002  229 MINUTE ORDER of 7/1/02 by Hon. David H. Coar : Pretrial conference held., Entered Final Pretrial Order. Mailed notice [Date Entered: 07/12/02, By: mw]
- 07/02/2002  223 MOTION by plaintiff for consideration of its motion in limine to preclude Karsten from arguing that damages did not accrue until the filing date of this lawsuit (Attachments); Notice. [Date Entered: 07/11/02, By: mw]
- 07/02/2002  230 MOTION by plaintiff, counter-defendant in limine to preclude Karsten's Section 112 and abandonment defenses (Attachments). [Date Entered: 07/15/02, By: jmp]
- 07/03/2002  220 REQUEST by Karsten for clarification and motion in limine on the application of prosecution history Estoppel to claims 7,8,14 and 15 of the '021 patent (Attachments); Notice. [Date Entered: 07/09/02, By: gy]
- 07/08/2002  219 MEMORANDUM by Karsten Mfg Corp in opposition to Vardon's motion for consideration [217-1] (Attachments); Notice. [Date Entered: 07/09/02, By: gy]
- 07/08/2002 222 OPPOSITION by Karsten Mfg Corp to Vardon's motion in limine to preclude Karsten's Section 112 and abandonment defenses with exhibits (RESTRICTED) [Date Entered: 07/10/02, By: ar]













- 07/09/2002  221 RESPONSE by Vardon to Karstens's request for clarification and motion in limine on the application of prosecution history estoppel to claims 7,8,14 and 15 of the '021 patent' [220-1] (Attachments). [Date Entered: 07/10/02, By: gy]
- 07/09/2002  224 MINUTE ORDER of 7/9/02 by Hon. David H. Coar : For the reasons stated on the reverse side of this minute order, Vardon's motion for consideration [223-1] is denied. [This motion has yet to be docketed]. (See reverse of minuteorder.) No notice [Date Entered: 07/11/02, By: mw]
- 07/10/2002  225 MINUTE ORDER of 7/10/02 by Hon. David H. Coar : For the reasons stated on the reverse side of this minute order, Vardon's motion limine to preclude Karsten's 112 and abandonment defenses is granted in part and denied in part.[This motion has yet to be docketed]. (See reverse of minute order.) No notice [Date Entered: 07/11/02, By: mw]
- 07/10/2002  226 MINUTE ORDER of 7/10/02 by Hon. David H. Coar : For the reasons stated on the reverse side of this minute order, the procedure at trial shall be as follows: the trial will not be bifurcated; therefore, the same jury will determineliability as well as damages and all issues will be presented to the jury in a unitary fashion, i.e. without bifurcation. The issue of equitable conduct will be decided entirely by the jury. (See reverse of minute order.) Telephoned notice [Date Entered: 07/12/02, By: mw]
- 07/10/2002  227 MINUTE ORDER of 7/10/02 by Hon. David H. Coar : For the reasons stated on the reverse side of this minute order, Karsten's request for clarification and motion in limine on the application of prosecution history estoppel claims7,8,14,15 of the '021 patent is denied. [This motion has yet to be docketed]. (See reverse of minute order.) Telephoned notice [Date Entered: 07/12/02, By: mw]
- 07/11/2002  228 SUBMISSION by defendant of foundational affidavits (Attachments); Notice. [Date Entered: 07/12/02, By: mw]
- 07/15/2002  231 MINUTE ORDER of 7/15/02 by Hon. David H. Coar : Trial began - jury. Mailed notice [Date Entered: 07/16/02, By: jmp]
- 07/16/2002 = SCHEDULE set on 7/16/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/17/02 . No notice [Date Entered: 07/16/02, By: tc]
- 07/17/2002 = SCHEDULE set on 7/17/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/18/02 . No notice [Date Entered: 07/17/02, By: tc]
- 07/17/2002  232 MOTION by plaintiff, counter-defendant in limine to preclude Karsten from disparaging the performance of the U.S. Patent and Trademark Office or Examiner Grieb. [Date Entered: 07/23/02, By: jmp]
- 07/18/2002 = SCHEDULE set on 7/18/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/22/02 . No notice [Date Entered: 07/19/02, By: tc]
- 07/19/2002  244 MOTION by Vardon to amend its response to Karsten's request for admission (No.88). (Attachments); Notice. [Date Entered: 08/21/02, By: gy]
- 07/22/2002 = SCHEDULE set on 7/22/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/23/02 . No notice [Date Entered: 07/22/02, By: tc]
- 07/23/2002 = SCHEDULE set on 7/23/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/24/02. No notice [Date Entered: 07/23/02, By: pm]
- 07/23/2002  234 MEMORANDUM by defendant in opposition to Vardon's motion to amend its response to Karsten's request for admission (No. 88) [Date Entered: 07/25/02, By: cdy]
- 07/24/2002 = SCHEDULE set on 7/24/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/25/02 . No notice [Date Entered: 07/24/02, By: pm]
- 07/24/2002  233 REPLY by plaintiff in support of its motion to amend its response to Karsten's request for admission (No. 88) [Date Entered: 07/25/02, By: cdy]
- 07/24/2002  235 STIPULATED DISMISSAL WITH PREJUDICE. [Date Entered: 07/26/02, By: jmp]
















- 07/25/2002  236 MINUTE ORDER of 7/25/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 a.m. on 07/29/02. Pursuant to stipulated dismissal with prejudice, counts III and IV of Karsten's counterclaim against Vardon and Karsten's Thirdparty complaint against Dillis V. Allen are dismissed with prejudice, all parties to bear their own costs, expenses and attorneys' fees. Mailed notice [Date Entered: 07/26/02, By: jmp]
- 07/25/2002  245 MINUTE ORDER of 7/25/02 by Hon. David H. Coar: Vardon's motion to amend its response to Karsten's request for admission (No.88) is denied as stated in the record [244-1]. [Date Entered: 08/21/02, By: gy]
- 07/29/2002 = SCHEDULE set on 7/29/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/30/02 . No notice [Date Entered: 07/30/02, By: pm]
- 07/30/2002 = SCHEDULE set on 7/30/02 by Hon. David H. Coar : Jury trial held and continued to 10:00 7/31/02 . notice [Date Entered: 07/30/02, By: pm]
- 07/31/2002  237 JURY INSTRUCTIONS submitted by the court (Attachments). [Date Entered: 08/02/02, By: jmp]
- 07/31/2002  238 MINUTE ORDER of 7/31/02 by Hon. David H. Coar : Jury deliberations began. No notice [Date Entered: 08/02/02, By: jmp]
- 08/01/2002  239 VERDICT FORM for defendant and against plaintiff. [Date Entered: 08/07/02, By: jmp]
- 08/01/2002  240 JURY NOTES (Attachments). [Date Entered: 08/07/02, By: jmp]
- 08/01/2002  241 MINUTE ORDER of 8/1/02 by Hon. David H. Coar : Jury verdict in favor of the defendant and against the plaintiff. Judgment is hereby entered in favor of the defendant, Karsten Manufacturing Corporation and against the plaintiff, Vardon Golf Company. Trial ends - jury. This case is closed. terminating case Mailed notice [Date Entered: 08/07/02, By: jmp]
- 08/01/2002  242 ENTERED JUDGMENT [Date Entered: 08/07/02, By: jmp]
- 08/07/2002 = MAILED patent report to Commissioner of Patents and Trademarks with a certified copy of order dated 08/01/02. [Date Entered: 08/08/02, By: jmp]
- 08/15/2002  246 MOTION AND MEMORANDUM IN SUPPORT by defendant Karsten Mfg Corp to declare Vardon's conduct exceptional under 285 and to set a briefing schedule for attorneys' fees and expenses under Rule 54.3(b) (Attachments); Notice of motion [Date Entered: 08/21/02, By: eav]
- 08/16/2002  243 REQUEST by plaintiff Vardon Golf Co Inc, counter-defendant Vardon Golf Co Inc for a minute order to docket and file jury instruction submissions (Attachments). [Date Entered: 08/20/02, By: jmp]
- 08/16/2002  247 MOTION by plaintiff Vardon Golf Co Inc to preserve (Attachments); Notice of motion [Date Entered: 08/21/02, By: eav]
- 08/16/2002  248 RULE 59 MOTION by plaintiff Vardon Golf Co Inc for a new trial (Attachments) [Date Entered: 08/21/02, By: eav]
- 08/19/2002  249 AGREED NOTICE by plaintiff Vardon Golf Co Inc of motion for a new trial [248-1] [Date Entered: 08/21/02, By: eav]
- 08/20/2002  250 MINUTE ORDER of 8/20/02 by Hon. David H. Coar : Karsten's motion to declare Vardon's conduct exceptional under Section 285. Answer brief to motion due 9/11/02. [246-1] Reply to answer brief due 9/24/02. Ruling on Karsten's motion to declare Vardon's conduct exceptional under Section 285 will be by mail. Karsten's motion to set a schedule for attorneys fees and expenses under Rule 54.3(b) is moot. [246-2] The Court hereby sets 9/24/02 for the filing of documents/papers as required under the Local Rules relating to fees and costs. Vardon Golf's Rule 59 Motion for a new trial is denied. [248-1] Vardon's motion to preserve the tape recording pertaining to the section of the trial transcript Vardon believes contains a transcription error is granted (no appearance is required on 8/22/02.) [247-1] Vardon Request for a minute order to docket and file jury instruction










- submissions is denied without prejudice. Mailed notice [Date Entered: 08/21/02, By: eav]
- 08/20/2002  252 RENEWED MOTION by defendant, counter-claimant for judgment as a matter of law of invalidity of claims 14 and 15 of the '021 patent; Notice. [Date Entered: 09/03/02, By: jmp]
- 08/22/2002  253 AMENDED NOTICE by defendant, counter-claimant of motion for judgment as a matter of law of invalidity of claims 14 and 15 of the '021 patent [252-1]. [Date Entered: 09/03/02, By: jmp]
- 08/28/2002  251 RESPONSE by plaintiff to Karsten's renewed motion for judgment as a matter of law of invalidity of claims 14 and 15 of the '021 patent. [Date Entered: 08/29/02, By: nf]
- 08/30/2002  254 MINUTE ORDER of 8/30/02 by Hon. David H. Coar : Karsten's renewed motion for judgment as a matter of law of invalidity of claims 14 and 15 of the '021 patent is denied [252-1]. Mailed notice [Date Entered: 09/03/02, By: jmp]
- 09/06/2002  255 NOTICE OF APPEAL to the Federal Circuit by plaintiff from verdict [239-1], from motion minute order [241-4], from Scheduling order terminating case [241-3], from judgment entered [242-1], from motion for judgment as a matter of law of invalidity claims 14 and 15 of the '021 patent [252-1], and from minute order [254-1] (\$105.00 Paid) [Date Entered: 09/09/02, By: dj]
- 09/11/2002  256 RESPONSE by plaintiff, counter-defendant to Karsten's motion to declare Vardon's conduct exceptional under 285 et al [246-1] (Attachments). [Date Entered: 09/12/02, By: jmp]
- 09/24/2002  257 REPLY by defendant, counter-claimant in support of its motion to declare Vardon's conduct exceptional under 285 [246-1] (Attachments). [Date Entered: 09/25/02, By: jmp]
- 09/24/2002  258 JOINT STATEMENT under LR 54.3 related to Karsten's motion for attorneys' fees (Attachments). [Date Entered: 09/25/02, By: jmp]
- 09/24/2002  259 MEMORANDUM by defendant, counter-claimant in support of application for costs. [Date Entered: 09/26/02, By: jmp]
- 09/24/2002  261 AFFIDAVIT of David A.Roodman [Date Entered: 09/27/02, By: cdy]
- 09/25/2002  260 SEVENTH CIRCUIT transcript information sheet by plaintiff. [Date Entered: 09/26/02, By: jmp]
- 09/30/2002  262 NOTICE OF CROSS-APPEAL by defendant Karsten Mfg Corp from motion minute order [254-1], from judgment entered [242-1], from Scheduling order Jury verdict in favor of the defendant and against the plaintiff. Judgment is hereby entered in favor of the defendant, Karsten Manufacturing Corporation and against the plaintiff, Vardon Golf Company. Trial ends - jury. This case is closed. [241-1], from Scheduling order [241-2], from Scheduling order terminating case [241-3], from motion minute order [241-4] (Fee Paid) [Date Entered: 10/01/02, By: ch]
- 10/02/2002  263 RESPONSE by plaintiff, counter-defendant to Karsten's memorandum in support of application for costs (Attachments). [Date Entered: 10/03/02, By: jmp]
- 10/08/2002 264 TRANSCRIPT of proceedings for the following date(s): 08/20/02 Before Honorable David H. Coar. [Date Entered: 10/09/02, By: air]
- 10/09/2002  265 REPLY by defendant, counter-claimant in support of application for costs (Attachments). [Date Entered: 10/10/02, By: jmp]
- 10/10/2002  266 COMBINED MOTION and memorandum by Thomas G. Scavone, Patrick F. Solon and Keith A. Vogt, counsel for plaintiff, counter-defendant for withdrawal of appearances; Notice. [Date Entered: 10/16/02, By: jmp]
- 10/15/2002  267 MINUTE ORDER of 10/15/02 by Hon. David H. Coar : Thomas G. Scavone, Patrick F. Solon and Keith A. Vogt's motion for withdrawal of appearances













- [266-1] due 10/22/02. Reply to answer brief due 10/30/02. Hearing on combined motion and memorandum for withdrawal of appearances [266-1] set for 9:00 a.m. on 11/07/02. No notice [Date Entered: 10/16/02, By: jmp]
- 10/17/2002  268 MEMORANDUM by defendant, counter-claimant in opposition to Niro, Scavone's and Michael Mazza's motions for withdrawal of appearances [266-1]. [Date Entered: 10/21/02, By: jmp]
- 10/17/2002  269 MEMORANDUM by defendant, counter-claimant in opposition to Niro, Scavone's motion for withdrawal of appearance [266-1]. [Date Entered: 10/21/02, By: jmp]
- 10/31/2002 270 TRANSCRIPT of proceedings for the following date(s): 07/01/02 before The Honorable David H. Coar. [Date Entered: 11/04/02, By: lxs]
- 11/05/2002  271 MEMORANDUM IN REPLY by Thomas G Scavonne to 10/30/02 Vardon Golf letter brief on withdrawal [Date Entered: 11/06/02, By: ip]
- 11/07/2002  272 MINUTE ORDER of 11/7/02 by Hon. David H. Coar : Plaintiff's motion for withdrawal of appearances [266-1] of Thomas G. Scavone Patrick Francis Solon and Keith A. Vogt is granted. Mailed notice [Date Entered: 11/08/02, By: jmp]
- 12/09/2002  274 ACKNOWLEDGEMENT of receipt of short record on appeal by the Federal Circuit 03-1125 [Date Entered: 12/16/02, By: jmp]
- 12/10/2002  273 ACKNOWLEDGEMENT of receipt of short record on appeal USCA 02-4158. [Date Entered: 12/12/02, By: jmp]
- 12/12/2002  275 MOTION by defendant, counter-claimant, third-party plaintiff for leave to propound discovery; Memorandum in support (Attachments); Notice. [Date Entered: 12/18/02, By: jmp]
- 12/17/2002  276 MINUTE ORDER of 12/17/02 by Hon. David H. Coar : Defendant's motion and memorandum for leave to propound discovery is granted [275-1] for the reasons stated on the record. No notice [Date Entered: 12/18/02, By: jmp]
- 12/31/2002  277 OPINION from the 7th Circuit: Argued 12/06/02; Decided 12/26/02.(02-4158) [Date Entered: 01/02/03, By: cdy]
- 01/10/2003 = ORDER dated 1/10/03 from the Federal Circuit. It is ordered that: Niro, Scavone is directed to file a consolidated response within 10 days of the date of filing of this order. Any other respondent may also respond within that time.(Misc. Docket No. 722, 723, 724) (Original in 98 C 2944) [Date Entered: 01/15/03, By: eav]
- 01/10/2003  278 MOTION by defendant to compel Vardon and Niro, Scavone to immediately produce the information requested in Karsten's recently filed discovery requests and subpoena (Attachments); Notice. [Date Entered: 01/17/03, By: air]
- 01/14/2003 = TRANSCRIPT of proceedings for the following date(s): 10/15/02 appeal [262-1], appeal [255-1] Before Honorable David H. Coar (Original in 98 C 2944) [Date Entered: 01/15/03, By: eav]
- 01/16/2003  279 MINUTE ORDER of 1/16/03 by Hon. David H. Coar: Defendant's motion to compel is referred to the Magistrate Judge. Mailed notice [Date Entered: 01/17/03, By: air]
- 01/16/2003  280 RESPONSE by plaintiff, counter-defendant Vardon Golf Co Inc, third-party defendant Dillis V Allen to Karsten Manufacturing Corporation's motion to compel [278-1] (Attachments). [Date Entered: 01/17/03, By: km]
- 01/17/2003  281 REFERRAL ORDER of 1/17/03 The case is referred to the Hon. Morton Denlow from Hon. David H. Coar for discovery motions; i.e. motion to compel. (For further detail see order.) Mailed notice [Date Entered: 01/21/03, By: jmp]
- 01/17/2003  282 NOTICE of docketing a petition for writ of mandamus by the 7th Circuit; Court of Appeals. [Date Entered: 01/21/03, By: jmp]










- 01/21/2003 = SCHEDULE set on 1/21/03 by Hon. Morton Denlow : This matter has been referred to Judge Denlow for ruling on a pending motion. If no briefing schedule has been set or if no briefing is desired, the parties are to notice the motion up on Mondays or Wednesdays at 9:15 a.m. Judge Denlow does not desire briefs on discovery disputes. Otherwise, the parties are to appear for status or argument at 10:00 on 2/13/03 . Mailed notice [Date Entered: 01/21/03, By: dmk]
- 01/22/2003  283 CERTIFIED copy of Order dated 01/14/03 from the Federal Circuit. (02-1606, 03-1125). Karsten Mfg Corp moves to deactivate 02-1606, 03-1125 pending resolution of a Fed.R.Civ.P. Rule 59(e) motion under consideration in the United States District Court for the Northern District of Illinois and for an extension of time until 40 days after this appeal is reactivated, to file its brief. Vardon Golf Company, Inc. has not responded. Upon consideration thereof it is ordered that the motions are granted. [Date Entered: 01/29/03, By: jmp]
- 01/23/2003  284 RENEWED NOTICE by defendant, counter-claimant of motion to compel Vardon and Niro, Scavone to immediately produce the information requested in Karsten's recently filed discovery requests and subpoena [278-1]. [Date Entered: 02/04/03, By: jmp]
- 01/24/2003  285 AMENDED NOTICE by defendant, counter-claimant of motion to compel Vardon and Niro, Scavone to immediately produce the information requested in Karsten's recently filed discovery requests and subpoena [278-1]. [Date Entered: 02/04/03, By: jmp]
- 01/24/2003  286 REPLY by defendant, counter-claimant in support of its motion to compel Vardon and Niro, Scavone to immediately produce the information requested in Karsten's recently filed discovery requests and subpoena [278-1] (Attachment); Notice. [Date Entered: 02/04/03, By: jmp]
- 02/03/2003  287 MINUTE ORDER of 2/3/03 by Hon. Morton Denlow : Hearing on Karsten Manufacturing Corporation's motion to compel Vardon and Niro, Scavone to immediately produce the information requested in Karsten's recently filed discovery requests and subpoena [278-1]. Oral argument set for 11:00 a.m. on 02/12/03 on Karsten Manufacturing Corporation's motion to compel Dillis V. Allen to produce documents referred to in his privileged log for in camera inspection by the Court on or by 02/10/03. Defendant's counsel to provide copies of the counterclaim, answer to the counterclaim and copy of the jury verdict to the Court in or by 02/05/03. Status hearing set for 02/13/03 is stricken. Mailed notice by judge's staff. [Date Entered: 02/04/03, By: jmp]
- 02/12/2003  288 MINUTE ORDER of 2/12/03 by Hon. Morton Denlow : Oral argument held on defendant Karsten Manufacturing Corp.'s motion to compel Vardon and Niro, Scavone to immediately produce the information requested in Karsten's recently filed discovery requests and subpoena [278-1]. Said motion is taken under advisement. Ruling on defendant's motion to compel [278-1] to be made by 03/05/03. Mailed notice by judge's staff [Date Entered: 02/13/03, By: jmp]
- 03/10/2003 289 TRANSCRIPT of proceedings for the following date(s): 12/17/02 appeal [262-1] before Honorable David H. Coar. [Date Entered: 03/11/03, By: jmp]
- 03/28/2003  292 MINUTE ORDER of 3/28/03 by Hon. Morton Denlow : Defendant, Karsten Manufacturing Corporation's motion to compel Vardon and Niro, Scavone to immediately produce the information requested in Karsten's recently filed discovery requests and subpoena is granted in part and denied in part [278-1]. All matters relating to the referral of this action being resolved, the case is returned to the assigned judge. Terminating the case referral to Hon. Morton Denlow. Entered Memorandum Opinion and Order. Mailed notice by judge's staff [Date Entered: 03/31/03, By: jmp]
- 03/31/2003  290 BILL OF COSTS submitted in favor of Karsten Manufacturing Corporation in the amount of \$100,900.86 (Attachments). [Date Entered: 03/31/03, By: jmp]

- jmp]
- 03/31/2003 = COSTS taxed bill of costs [290-1] for defendant Karsten Mfg Corp, in the amount of \$100,900.86 against plaintiff (Attachments) [Date Entered: 03/31/03, By: jmp]
- 03/31/2003  291 MINUTE ORDER of 3/31/03 by Hon. David H. Coar : For the reasons stated in the attached memorandum opinion and order, Karsten's to declare Vardon's conduct exceptional under 285 is granted [246-1]. Karstein is permitted to recover its attorney's fees in the amount of \$2,014,699.31. For the reasons stated in the attached memorandum opinion and order, Karsten's Bill of Costs is also granted in the amount of \$100,900.86. Plaintiff is ordered to pay defendant Karsten \$100,900.86 in costs and \$2,014,699.31 in attorney's fees. Entered Memorandum Opinion and Order. Mailed notice [Date Entered: 03/31/03, By: jmp]
- 04/08/2003 293 TRANSCRIPT of proceedings for the following date(s): 02/03/03 before Honorable Morton Denlow. [Date Entered: 04/09/03, By: jmp]
- 04/11/2003  294 OBJECTIONS by plaintiff to Hon. Judge Morton Denlow's opinion and order of 03/28/03 [292-1] (Attachments). [Date Entered: 04/14/03, By: jmp]
- 04/14/2003  297 MOTION by defendant, counter-claimant under Rule 15(a) and 59(e) for leave to amend its counterclaim and the judgment to name Dillis Allen as a counterclaim defendant; Memorandum in support (Attachment); Notice. [Date Entered: 04/23/03, By: jmp]
- 04/16/2003  299 UNOPPOSED MOTION by Niro Scavone Haller to stay March 28th order; Memorandum in support (Attachments); Notice. [Date Entered: 04/24/03, By: jmp]
- 04/16/2003  301 MOTION by plaintiff, counter-defendant to withdraw attorney Michael P. Mazza; Notice. [Date Entered: 04/24/03, By: jmp]
- 04/18/2003  303 ATTORNEY APPEARANCE for plaintiff, counter-defendant by Dillis V. Allen; Notice. [Date Entered: 04/28/03, By: jmp]
- 04/21/2003  304 OBJECTIONS by defendant, counter-claimant, third-party plaintiff to Vardon's objections to Magistrate Judge Denlow's Opinion and Order of 03/28/03. [Date Entered: 04/28/03, By: jmp]
- 04/22/2003  295 OPPOSITION by plaintiff, counter-defendant to Karsten's motion for leave to amend its counterclaim and the judgment to name Dillis Allen as a counterclaim defendant. [Date Entered: 04/23/03, By: jmp]
- 04/22/2003  296 MINUTE ORDER of 4/22/03 by Hon. David H. Coar : The plaintiff having filed an [Doc #294] objection to the [Doc #292] Opinion and Order and the defendant having filed opposition to plaintiff's objection to Judge Denlow's Opinion and Order of March 28, 2003, the Court will take these matters under advisement and rule by mail. Mailed notice [Date Entered: 04/23/03, By: jmp]
- 04/22/2003  298 MINUTE ORDER of 4/22/03 by Hon. David H. Coar : Answer brief to motion under Rule 15(a) and 59(e) for leave to amend its counterclaim and the judgment to name Dillis Allen as a counterclaim defendant [297-1] was filed 04/22/03. Reply to answer brief due within seven (7) days. Motion taken under advisement - ruling on defendant's motion under rule 15(a) and 59(e) will be by mail. Mailed notice [Date Entered: 04/23/03, By: jmp]
- 04/23/2003  300 MINUTE ORDER of 4/23/03 by Hon. Morton Denlow : Motion hearing held. Non-Party Niro, Scavone, Haller & Niro's motion to stay March 28th order is granted pending a ruling by Judge Coar [299-1]. Mailed notice by judge's staff [Date Entered: 04/24/03, By: jmp]
- 04/23/2003  302 MINUTE ORDER of 4/23/03 by Hon. David H. Coar : Michael P. Mazza's unopposed motion for withdrawal of appearance is granted as stated on the record [301-1]. Michael P. Mazza to withdraw as attorney for Vardon. Mailed notice [Date Entered: 04/24/03, By: jmp]
- 04/29/2003 305 TRANSCRIPT of proceedings for the following date(s): 02/02/03 before

- Honorable Morton Denlow. [Date Entered: 04/30/03, By: jmp]
- 04/29/2003  316 MOTION by defendant, counter-claimant for extension of time to file reply memorandum in support of its motion for leave to amend its counterclaim and the judgment; Notice. [Date Entered: 05/09/03, By: jmp]
- 04/30/2003 306 NOTICE OF APPEAL to the Federal Circuit by plaintiff and counter-defendant Vardon Golf Co Inc from motion minute order [291-2], from Scheduling order Entered Memorandum Opinion and Order. [291-1], from judgment entered [242-1], from Scheduling order terminating case [241-3], from motion minute order [241-4], from Scheduling order Entered Memorandum Opinion and Order. [134-1] (\$105.00 Paid); Notice [Date Entered: 05/01/03, By: dj]
- 04/30/2003  307 DOCKETING STATEMENT to the Federal Circuit by plaintiff and counter-defendant Vardon Golf Co Inc regarding appeal [306-1]; Notice. [Date Entered: 05/01/03, By: dj]
- 04/30/2003  308 SUPPLEMENT by plaintiff to Vardon's opposition to Karsten's motion for leave to amend its counterclaim and the judgment to name Dillis Allen as a counterclaim defendant [297-1]; Notice [Date Entered: 05/02/03, By: cdy]
- 04/30/2003  317 MOTION by plaintiff counter-defendant under Rule 8(a)(1) of the Federal Rules of Appellate Procedure for a stay pending appeal; Notice. [Date Entered: 05/09/03, By: jmp]
- 05/05/2003  309 REPLY by defendant, counter-claimant to motion under Rule 15(a) and 59 (e) for leave to amend (1) its counterclaim and (2) the judgment to name Dillis Allen as a counterclaim defendant [297-1]; Notice. [Date Entered: 05/06/03, By: jmp]
- 05/05/2003  310 RESPONSE by Irene Allen and objections to citation to discover assets; Notice. [Date Entered: 05/06/03, By: jmp]
- 05/05/2003  311 RESPONSE and objections by third-party defendant Dillis V Allen to citation to discover assets; Notice. [Date Entered: 05/06/03, By: jmp]
- 05/05/2003  312 RESPONSE and objections by plaintiff Vardon Golf Co Inc to citation to discover assets; Notice. [Date Entered: 05/06/03, By: jmp]
- 05/06/2003  313 NOTICE by plaintiff, counter-defendant of filing of bankruptcy (Attachment). [Date Entered: 05/07/03, By: jmp]
- 05/07/2003  314 MEMORANDUM by defendant, counter-claimant in opposition to Vardon's motion to stay pending appeal; Notice. [Date Entered: 05/08/03, By: jmp]
- 05/07/2003  315 REPLY by defendant, counter-claimant to Vardon's, Dillis Allen's and Irene Allen's responses and objections to citations to discover assets; Notice. [Date Entered: 05/08/03, By: jmp]
- 05/07/2003 = CITATION to Discover Assets Issued as to Custodian of Records at Bank One Corp and Elgin State Bank. [Date Entered: 05/08/03, By: jmp]
- 05/08/2003  319 MINUTE ORDER of 5/8/03 by Hon. David H. Coar : Karsten's motion for extension of time to file reply memorandum in support of motion for leave to amend its counterclaim and the judgment is granted to 05/05/03 [316-1]. Dillis Allen's motion under Rule 8(a)(1) of the Rules of Appellate Procedure for a stay pending appeal is denied for the reasons stated on the record [317-1]. The citations to discover assets are referred to the Magistrate Judge. Mailed notice [Date Entered: 05/09/03, By: jmp]
- 05/08/2003  320 MOTION by defendant, counter-claimant to compel Vardon Golf Company, Dillis Allen, and Irene Allen to produce documents and appear in response to citations to discover assets (Attachments); Notice. [Date Entered: 05/13/03, By: jmp]
- 05/09/2003  318 REFERRAL ORDER: Case referred to Hon. Morton Denlow for all discovery disputes Mailed notice. [Date Entered: 05/09/03, By: pm]
- 05/12/2003  321 MINUTE ORDER of 5/12/03 by Hon. Morton Denlow : Karsten's motion to compel Vardon Golf Company, Dillis Allen, and Irene Allen to produce

- docuemnts and appear in response to citations to discover assets [320-1] is entered and continued to 9:15 a.m. on 05/21/03. Mailed notice by judge's staff [Date Entered: 05/13/03, By: jmp]
- 05/16/2003  322 ANSWER by Bk 1 NA (Chicago) to citation to discover assets (Attachment). [Date Entered: 05/19/03, By: jmp]
- 05/21/2003  323 MINUTE ORDER of 5/21/03 by Hon. Morton Denlow : Status hearing set for 6/17/03 at 10:00 a.m. Motion hearing held on Karsen's motion to compel Vardon Golf Company, Dillis Allen, and Irene to produce documents and appear in response to citations to discover assets [320-1]. Karsten's motion to compel Vardon Golf Company, Dillis Allen, and Irene Allen to produce documents and appear in response to citations to discover assets is granted [320-1]. All documents are to be produced on or by 05/28/03. Dillis Allen and Irene Allen to appear for examination on or by 06/11/03. Notice mailed by judge's staff [Date Entered: 05/22/03, By: nfl]
- 05/28/2003  324 ACKNOWLEDGEMENT of receipt of short record on appeal [306-1] US Federal Circuit 03-1389. [Date Entered: 05/30/03, By: jmp]
- 06/06/2003 325 TRANSCRIPT of proceedings for the following date(s): 07/15/02, 07/16/02, 07/17/02, 07/18/02, 07/22/02, 07/23/02, 07/24/02, 07/25/02, 07/26/02, 07/29/02, 07/29/02, 07/30/02, 07/31/02, 08/02/02, 05/08/03 appeal [306-1] before Honorable David H. Coar. (Documents 325-1 through 325-15). [Date Entered: 06/06/03, By: jmp]
- 06/11/2003 = CITATION to Discover Assets Issued one original and one copy as to Custodian of Records Bank One Corporation. [Date Entered: 06/12/03, By: jmp]
- 06/13/2003  326 FURTHER MOTION by defendant, counter-claimant to compel responses to citations to discover assets and to cite Dillis Allen for contempt (Attachment); Notice. [Date Entered: 06/18/03, By: jmp]
- 06/17/2003  327 MINUTE ORDER of 6/17/03 by Hon. Morton Denlow : Status hearing held and continued to 10:00 a.m. on 07/01/03. Motion hearing held on Karsten's motion to compel responses to citations to discover assets and to cite Dillis Allen for contempt. Karsten's motion to compel responses to citations to discover assets is granted in part and denied in part. Darsten's motion to cite Dillis Allen for contempt is denied [326-1]. (See reverse of minute order.) Mailed notice [Date Entered: 06/18/03, By: jmp]
- 06/18/2003 328 FEDERAL CIRCUIT transcript purchase order sheet by defendant, counter-claimant; Notice. [Date Entered: 06/23/03, By: jmp]
- 06/23/2003 = CITATION to Discover Assets Issued as to Custodian of Records, Fifth third Bank a/k/a Old Kent Bank. [Date Entered: 06/24/03, By: hb]
- 06/23/2003  329 ANSWER by Bank One, N.A. to citation to discover assets [Date Entered: 06/24/03, By: hb]
- 06/30/2003  330 EMERGENCY MOTION by plaintiff, counter-defendant to enjoin Karsten Manufacturing Corporation and Fifth Third Bank (Attachment); Notice. [Date Entered: 07/02/03, By: jmp]
- 07/01/2003  331 MINUTE ORDER of 7/1/03 by Hon. David H. Coar : Emergency motion by Vardon Golf Company to enjoin Karsten Manufacturing Corporation and Fifth Third Bank is stricken [330-1] for the movant's failure to appear and present the motion. Mailed notice [Date Entered: 07/02/03, By: jmp]
- 07/01/2003  332 MINUTE ORDER of 7/1/03 by Hon. Morton Denlow : Status hearing held and continued to 07/31/03 at 10:00 a.m. Vardon Golf Company is to produce for inspection and copy all financial records from 01/01/98 to the present on 07/07/03 at 10:00 a.m. in Dillis Allen's office. Dillis Allen will appear on 07/15/03 at 11:00 a.m. to be deposed in the citation to discover assets of Vardon Golf Company. Dillis Allen's continued deposition is limited to 3 hours. Mailed notice by judge's staff [Date Entered: 07/07/03, By: gj]

- 07/10/2003  333 EMERGENCY MOTION by plaintiff, counter-defendant to enjoin Karsten Manufacturing Corporation and Fifth Third Bank (Attachments); Notice. [Date Entered: 07/14/03, By: jmp]
- 07/10/2003  334 MINUTE ORDER of 7/10/03 by Hon. David H. Coar : Hearing held on plaintiff's emergency motion to enjoin Karsten Manufacturing Corporation and Fifth Third Bank. Plaintiff's emergency motion to enjoin Karsten and Fifth Third Bank is granted in part and continued in part [333-1]. To the extent that the accounts of Dillis and Irene Allen are frozen pursuant to the Citation issued by the defendant, Fifth Third Bank is hereby ordered to unfreeze the accounts of Dillis Allen and Irene Allen. The plaintiff shall file a memorandum in support of the issue discussed on therecord by noon on 07/17/03, and that issue is set for hearing at 9:30 a.m. on 07/18/03. Mailed notice [Date Entered: 07/14/03, By: jmp]
- 07/16/2003  335 MINUTE ORDER of 7/16/03 by Hon. David H. Coar : The portion of the plaintiff's emergency motion to enjoin Karsten Manufacturing Corporation and Fifth Third Bank [333-1] scheduled for 07/18/03 is stricken and is continued to 9:00a.m. on 07/24/03. Mailed notice [Date Entered: 07/17/03, By: jmp]
- 07/17/2003 336 TRANSCRIPT of proceedings for the following date(s): 06/17/03 appeal [306-1] before Honorable Morton Denlow. [Date Entered: 07/18/03, By: jmp]
- 07/17/2003  337 MEMORANDUM by plaintiff, counter-defendant in support of its emergency motion to enjoin Karsten Manufacturing Corporation and Fifth Third Bank [333-1]; Notice. [Date Entered: 07/21/03, By: jmp]
- 07/22/2003  338 MINUTE ORDER of 7/22/03 by Hon. David H. Coar : At the request of the parties, the hearing regarding the remaining issues in the plaintiff's emergency motion to enjoin Fifth Third Bank and Vardon is reset to 9:00 a.m. on 07/31/03. Mailed notice [Date Entered: 07/23/03, By: jmp]
- 07/28/2003  339 MEMORANDUM by defendant, counter-claimant in opposition to Vardon's motion to enjoin Karsten and Fifth Third Bank; Notice. [Date Entered: 07/29/03, By: jmp]
- 07/28/2003 340 EXHIBITS A through F by defendant, counter-claimant to its memorandum in opposition to Vardon's motion to enjoin Karsten and Fifth Third Bank [339-1] (RESTRICTED). [Date Entered: 07/29/03, By: jmp]
- 07/28/2003  341 MOTION by defendant, counter-claimant to amend the protective order (Attachment); Notice. [Date Entered: 07/31/03, By: jmp]
- 07/31/2003  342 MINUTE ORDER of 7/31/03 by Hon. David H. Coar : Motion hearing held. For the reasons stated on the record, the citation for bank records as to Dillis and Irene Allen is quashed - this concludes all issues in the #333 plaintiff's emergency motion to enjoin. Over the oral objections of the plaintiff, the defendant's motion to amend the Protective Order is granted [341-1]. Mailed notice [Date Entered: 08/01/03, By: jmp]
- 07/31/2003  343 MINUTE ORDER of 7/31/03 by Hon. Morton Denlow : Status hearing set for 07/31/03 is stricken. All matters relating to the referral of this action having been resolved, the case is returned to the assigned judge. Terminating the case referral to Hon. Morton Denlow. Mailed notice by judge's staff [Date Entered: 08/01/03, By: jmp]
- 08/01/2003 344 TRANSCRIPT of proceedings for the following date(s): 07/10/03 appeal [306-1] before Honorable David H. Coar. [Date Entered: 08/04/03, By: jmp]
- 08/25/2003  345 NOTICE by plaintiff, counter-defendant's counsel of change of address [Date Entered: 08/26/03, By: lxs]
- 08/25/2003  346 NOTICE by plaintiff, counter-defendant of notice [345-1] [Date Entered: 08/26/03, By: lxs]
- 09/11/2003  348 MOTION by defendant, counter-claimant for leave to file supplemental memorandum in support of Karsten's motion to amend its counterclaim and the judgment to name Dillis Allen as a counterclaim defendant

- (Attachment); Notice of order lifting automatic stay. [Date Entered: 09/24/03, By: jmp]
- 09/18/2003  349 RENEWED MOTION by plaintiff, counter-defendant under Rule 8(a)(1) of the Federal Rules of Appellate Procedure for a stay pending appeal (Attachments); Notice. [Date Entered: 09/24/03, By: jmp]
- 09/22/2003  347 ATTORNEY APPEARANCE for defendant, counter-claimant, third-party plaintiff by John M. Broderick. [Date Entered: 09/24/03, By: jmp]
- 09/22/2003  351 MEMORANDUM by defendant, counter-claimant in opposition to Vardon's renewed motion for stay pending appeal (Attachments); Notice. [Date Entered: 10/01/03, By: jmp]
- 09/23/2003  350 MINUTE ORDER of 9/23/03 by Hon. David H. Coar : Vardon is given to 09/30/03 to file a response to the Notice of Order Lifting Automatic Stay and motion for leave to file supplemental memorandum in support of Karsten's motion to amend its counterclaim and the judgment to name Dillis Allen as a counterclaim defendant [348-1] thereafter the motion will be taken under advisement. ruling to issue by mail. Vardon's renewed motion under Rule 8(a)(1) of the Federal Rules of Appellate Procedure for a stay pending appeal is denied [349-1] for the reasons stated on the record. Mailed notice [Date Entered: 09/24/03, By: jmp]
- 09/23/2003  352 PRAECIPE by defendant Karsten Mfg Corp, counter-claimant Karsten Mfg Corp. [Date Entered: 10/02/03, By: jmp]
- 10/02/2003 == TWO WRITS of execution and three certified copies of each with two copies of praecipe issued to the U.S. Marshals' Office for service as to plaintiff Vardon Golf Co., Inc. [Date Entered: 10/02/03, By: jmp]
- 10/02/2003  353 REPLY by plaintiff to Karsten's supplemental memorandum in support of Karsten's motion under Rule 15(a) and 59(e) for leave to amend its counterclaim and the judgment to name Dillis Allen as a counterclaim defendant [297-1](Attachments); Notice. [Date Entered: 10/07/03, By: air]
- 10/29/2003  354 RETURN OF SERVICE executed as to defendant Karsten Mfg Corp on 10/27/03. [Date Entered: 10/30/03, By: jmp]
- 11/07/2003  355 CERTIFIED copy of Order dated 10/31/03 from the Federal Circuit. (02-1606, 03-1125, 03-1389). 1) It is ordered that execution of the judgment is temporarily stayed pending receipt of Karsten's response and consideration by the court of the papers submitted. 2) Karsten's response is due no later than 11/08/03; Notice. [Date Entered: 11/10/03, By: jmp]
- 12/02/2003 356 TRANSCRIPT of proceedings for the following date(s): 09/23/03. appeal [306-1] before Honorable David H. Coar. [Date Entered: 12/05/03, By: jmp]
- 12/16/2003  357 NOTIFICATION by defendant Karsten Mfg Corp of change of address [Date Entered: 12/17/03, By: eav]
- 01/20/2004 358 TRANSCRIPT of proceedings for the following date(s): 05/21/03 before Honorable Morton Denlow. [Date Entered: 01/21/04, By: jmp]

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US District Court Civil Docket

US District Court for the Northern District of Illinois
(Chicago)

1:99cv2784

Vardon Golf Co Inc v. Rossignol Ski Co Inc, et al

This case was retrieved from the court on Thursday, April 29, 2004

Date Filed: 04/27/1999
Assigned To: Honorable Charles R Norgle, Sr
Referred To:
Nature of suit: Patent (830)
Cause: Patent Infringement
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: TERMED PROTO
KEYS A0279

Closed: Yes
Statute: 35:183
Jury
Demand: Plaintiff
Demand
Amount: \$0

Litigants

Vardon Golf Co Inc, Vardon Golf Company,
Inc
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v.

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Dillis V Allen
COUNTER-DEFENDANT

Date	#	Proceeding Text
04/27/1999	<u>1</u>	COMPLAINT; jury demand - Civil cover sheet - Appearance(s) of Patrick Francis Solon, Keith A. Vogt, Michael P. Mazza, Thomas G. Scavone as attorney(s) for plaintiff (2 originals and 2 copies summons(es) issued.) (Documents: 1-1 through 1-3) (vj) [Entry date 04/29/99]
04/27/1999	=	RECEIPT regarding payment of filing fee paid; on 4/27/99 in the amount of \$ 150.00, receipt # 1042627. (vj) [Entry date 04/29/99]
04/27/1999	<u>2</u>	NOTICE of claims involving patent pursuant to Local Rule 13 by plaintiff. (vj) [Entry date 04/29/99]
04/29/1999	=	MAILED PATENT report to Washington, D.C. Copy to files. (vj) [Entry date 04/29/99] [Edit date 04/29/99]
08/06/1999	<u>3</u>	ATTORNEY APPEARANCE for defendants by Roseann Oliver, Michael Kenneth Bartosz. (vj) [Entry date 08/10/99]
08/06/1999	<u>4</u>	ANSWER to complaint [1-1] and COUNTERCLAIM by defendant against Vardon Golf Co Inc; cntdft Dillis V Allen (vj) [Entry date 08/10/99]
08/06/1999	<u>4</u>	THIRD-PARTY COMPLAINT: by Cleveland Golf Inc. (vj) [Entry date 08/10/99]
08/18/1999	=	SCHEDULE set on 8/18/99 by Hon. George M. Marovich : Status hearing set to 9:30 9/9/99 . Parties are directgd to file a joint written status report by 9/3/99. Mailed notice (jd) [Entry date 08/18/99]

08/30/1999 5 ANSWER and affirmative defenses by plaintiff to defendants' counterclaims and third party complaint (mg) [Entry date 09/02/99]

08/31/1999 7 ANSWER TO COUNTERCLAIM and affirmative defenses [4-2] by Vardon Golf Co Inc & Dillis Allen to defendants' counterclaims and third party complaint. (tlm) [Entry date 09/07/99]

08/31/1999 8 ANSWER TO THIRD PARTY COMPLAINT and affirmative defenses [4-1] of defendants' [4-1] and answer to counterclaims by Dillis V Allen & plaintiff. [7-1] (tlm) [Entry date 09/07/99]

09/02/1999 = SCHEDULE set on 9/2/99 by Hon. George M. Marovich : Status hearing reset to 9:30 9/16/99 . Due to the schedule of this court, status hearing set for 9/9/99 stricken. Mailed notice (jd) [Entry date 09/02/99]

09/03/1999 6 ORDER setting joint status report by parties; Notice. (bc) [Entry date 09/07/99]

09/10/1999 = SCHEDULE set on 9/10/99 by Hon. George M. Marovich : Status hearing reset to 9:30 9/22/99 . Status hearing set for 9/16/99 stricken and reset by agreement of the parties. Telephoned notice (jd) [Entry date 09/10/99]

09/22/1999 = SCHEDULE set on 9/22/99 by Hon. George M. Marovich : Status hearing held and continued to 9:30 12/8/99 . In court notice (jd) [Entry date 09/22/99]

09/28/1999 = SCHEDULE set on 9/28/99 by Hon. George M. Marovich : Status hearing reset to 9:30 12/7/99 . Status hearing set for 12/8/99 stricken. Telephoned notice (jd) [Entry date 09/28/99]

09/29/1999 8 APPLICATION for leave to appear pro hac vice by Roger W. Parkhurst for Rossignol Ski Co Inc and Cleveland Golf Inc; Order entered granting leave by Hon. George M. Marovich (ar) [Entry date 09/30/99] [Edit date 09/30/99]

10/22/1999 9 RESPONSES by Vardon Golf to defendants' first set of document requests Nos. 1-28. (vj) [Entry date 10/25/99]

12/07/1999 = SCHEDULE set on 12/7/99 by Hon. George M. Marovich : Status hearing held. Summary judgment motion to be filed by 12/17/99. Parties are directed to inform court of the agreed briefing schedule as to the motion for summary judgment. Mailed notice (jd) [Entry date 12/08/99]

01/20/2000 10 MOTION by defendants Rossignol Ski Co Inc, Cleveland Golf Inc for leave to file brief in support of motion for summary judgment in excess of fifteen pages, instant. (vj) [Entry date 01/21/00]

01/20/2000 11 NOTICE OF FILING by defendant Cleveland Golf Inc regarding motion for partial summary judgment of invalidity of '021 patent claims 1 and 19; memorandum in support; motion for brief in excess; Undisputed facts supporting partial summary judgment of invalidity of '021 patent claims 1 and 19; Rossignol's motion for partial summary judgment of invalidity of '941 patent claims 12-18; memorandum supporting motion for partial summary judgment of invalidity of '941 patent claims 12-18; and Undisputed facts supporting partial summary judgment of invalidity of '941 patent claims 12-18; Exhibits 1-14 supporting motion for partial summary judgment of invalidity of '941 patent claims 12-18; Exhibits 15-41 supporting motion for partial summary judgment of invalidity of '021 patent claims 1 and 19. (vj) [Entry date 01/21/00]

01/20/2000 12 EXHIBITS 1-14 by Cleveland Golf Inc, Rossignol Ski Co Inc supporting motion for partial summary judgment of invalidity of '941 patent claims. (vj) [Entry date 01/21/00]

01/20/2000 13 EXHIBITS 15-41 by Cleveland Golf Inc, Rossignol Ski Co Inc supporting motion for partial summary judgment of invalidity of '021 patent claims 1 and 19. (vj) [Entry date 01/21/00]

01/20/2000 14 MOTION by Cleveland Golf/Rossignol for partial summary judgment of invalidity of '021 patent claims 1 and 19. (vj) [Entry date 01/24/00]

01/20/2000 15 MEMORANDUM by Cleveland Golf/Rossignol supporting motion for partial

- summary judgment of invalidity '021 patent claims 1 and 19 [14-1] (Attachment). (vj) [Entry date 01/24/00]
- 01/20/2000 16 UNDISPUTED facts supporting partial summary judgment of invalidity of '021 patent claims 1 and 19 by Cleveland Golf/Rossignol. (vj) [Entry date 01/24/00]
- 01/20/2000 17 MOTION by Cleveland Golf/Rossignol for partial summary judgment of invalidity of '941 patent claims 12-18. (vj) [Entry date 01/24/00]
- 01/20/2000 18 MEMORANDUM by Cleveland Golf/Rossignol supporting motion for partial summary judgment of invalidity of '941 patent claims 12-18 [17-1]. (vj) [Entry date 01/24/00]
- 01/20/2000 19 UNDISPUTED facts by Cleveland Golf/Rossignol supporting partial summary judgment of invalidity of '941 patent claims 12-18. (vj) [Entry date 01/24/00]
- 01/27/2000 20 MINUTE ORDER of 1/27/00 by Hon. George M. Marovich: Defendant Cleveland Golf/Rossignol's motion for leave to file brief in support of motion for summary judgment in excess of fifteen pages, instant is granted [10-1]. Response to Cleveland Golf/Rossignol's motion for partial summary judgment of invalidity of '941 patent claims 12-18 [17-1] due by 2/28/00; reply due 3/20/00. Response to Cleveland Golf/Rossignol's motion for partial summary judgment of invalidity of '021 patent claims 1 and 19 [14-1] due by 2/28/00; reply due by 3/20/00. Mailed notice (vj) [Entry date 01/28/00]
- 02/01/2000 = EXECUTIVE COMMITTEE ORDER of 02/01/00: Case reassigned to Hon. Charles R. Norgle. (dcap) [Entry date 02/04/00]
- 02/09/2000 = SCHEDULE set on 2/9/00 by Hon. Charles R. Norgle Sr : Status hearing set for 9:30 2/22/00 . Mailed notice (ef) [Entry date 02/09/00]
- 02/16/2000 21 MINUTE ORDER of 2/16/00 by Hon. Charles R. Norgle Sr: Status hearing set for 2/22/00 is stricken. Counsel to file agreed written status report. Ruling on pending motions to be mailed. Mailed notice (vj) [Entry date 02/17/00]
- 03/03/2000 22 INTERIM PROTECTIVE ORDER (RESTRICTED). (vj) [Entry date 03/06/00]
- 03/03/2000 23 LOCAL RULE 56.1 RESPONSE by Vardon Golf Co Inc to Cleveland Golf/Rossignol's undisputed facts supporting partial summary judgment of invalidity of '021 patent claims 1 and 19 [16-1] with Local 56.1 statement (ar) [Entry date 03/08/00]
- 03/03/2000 23 LOCAL RULE 56.1 STATEMENT by Vardon Golf Co Inc of additional undisputed facts supporting the denial of Cleveland's motion and the grant of Vardon's partial summary judgment for infringement of '021 patent claims 1 and 19 (ar).[Entry date 03/08/00]
- 03/03/2000 24 RESPONSE by Vardon Golf Co Inc to Cleveland Golf/Rossignol's motion for partial summary judgment of invalidity of '021 patent claims 1 and 19 [14-1] with memorandum in support (Attachments) (ar) [Entry date 03/08/00]
- 03/03/2000 24 MEMORANDUM by Vardon Golf Co Inc in support of its cross-motion for summary judgment of infringement of '021 patent claims 1 and 19 with response (Attachments) (ar) [Entry date 03/08/00]
- 03/03/2000 25 CROSS MOTION by plaintiff Vardon for partial summary judgment of validity of the 941 patent claims 12-18; Notice. (vj) [Entry date 03/15/00]
- 03/03/2000 26 MEMORANDUM IN RESPONSE by Vardon Golf Co Inc to Cleveland Golf/Rossignol's motion for partial summary judgment of validity of the 941 patent claims 12-18 [25-1] (Attachments). (vj) [Entry date 03/15/00] [Edit date 03/15/00]
- 03/03/2000 26 MEMORANDUM by Vardon Golf Co Inc in support of its cross motion for partial summary judgment of validity of the 941 patent claims 12-18 [25-1] (Attachments). (vj) [Entry date 03/15/00]
- 03/03/2000 27 CROSS MOTION by Vardon Golf Co Inc for partial summary judgment of infringement of '021 patent claims 1 and 19; Notice. (vj) [Entry date 03/15/00]

- 03/03/2000 28 RULE 56.1(b) response by plaintiff Vardon. (vj) [Entry date 03/15/00]
- 03/03/2000 29 UNOPPOSED MOTION by Vardon to file an over length brief in opposition to Cleveland and/Rossignol's motion for partial summary judgment of invalidity of '021 patent claims 1 and 19, and in support of Vardon's cross motion for infringement of '021 patent claims 1 and 19; Notice. (vj) [Entry date 03/15/00]
- 03/13/2000 30 MINUTE ORDER of 3/13/00 by Hon. Charles R. Norgle Sr: Vardon's unopposed motion to file an over length brief in opposition to Cleveland and/Rossignol's motion for partial summary judgment of invalidity of '021 patent claims 1 and 19, and in support of Vardon's cross motion for infringement of patent claims 1 and 19 is granted [29-1]. Response to Vardon's cross motion for partial summary judgment is due by 3/31/00. Vardon's reply is due by 4/14/00. Mailed notice (vj) [Entry date 03/15/00]
- 04/12/2000 31 JOINT MOTION by plaintiff Vardon Golf Co Inc, defendants Rossignol Ski Co Inc and Cleveland Golf Inc for entry of scheduling order on pending motions for summary judgment (eav) [Entry date 04/17/00]
- 04/19/2000 32 MINUTE ORDER of 4/19/00 by Hon. Charles R. Norgle Sr : Joint motion for entry of scheduling order on pending motions for summary judgment is granted. [31-1] Cleveland to file its response to plaintiff's motion for summary judgment and its reply in support of its own motions for summary judgment on or before 4/25/00. Plaintiff to produce Mr. Allen for deposition on or before 4/18/00. Telephoned notice (eav) [Entry date 04/20/00]
- 05/02/2000 33 MINUTE ORDER of 5/2/00 by Hon. Charles R. Norgle Sr : The reply briefs of defendants will be filed on 5/1/2000. Defendants' briefs in opposition to plaintiff's motions for summary judgment will be filed on 5/1/2000. The plaintiff will have an additional seven days to file its reply briefs in support of its motions for summary judgment. (Entered Agreed Scheduling Order dated 4/27/00. Telephoned notice (eav) [Entry date 05/02/00]
- 05/02/2000 34 UNOPPOSED MOTION by defendants to file an overlength brief supporting its motion for partial summary judgment of invalidity of '021 patent claims 1 and 19 ; Notice of filing (eav) [Entry date 05/03/00]
- 05/02/2000 35 REPLY MEMORANDUM by defendant supporting motion for partial summary judgment of invalidity of '941 patent claims 12-18. [17-1]; Notice of filing (eav) [Entry date 05/03/00]
- 05/02/2000 37 REPLY by defendants on undisputed facts supporting partial summary judgment of invalidity of '941 patent claims 12-18. [17-1], and with Cleveland Golf/Rossignol's opposition (eav) [Entry date 05/03/00]
- 05/02/2000 37 OPPOSITION by defendants to Vardon's Local Rule 56.1 response [28-1], and additional facts, supporting denial of Vardon's cross-motion for '941 validity (eav) [Entry date 05/03/00]
- 05/02/2000 38 MEMORANDUM by defendants in opposition to Vardon's motion for partial summary judgment of infringement of '021 patent claims 1 and 19 (eav) [Entry date 05/03/00]
- 05/02/2000 39 EXHIBITS 42-48 and 49-55 by defendants supporting motions for partial summary judgment [17-1], [14-1] (2 Vols.: 39-1 and 39-2) (eav) [Entry date 05/03/00]
- 05/03/2000 36 MEMORANDUM by defendants in opposition to Vardon's cross- motion for partial summary judgment of validity of the 941 patent claims 12-18 [25-1] (eav) [Entry date 05/03/00]
- 05/04/2000 40 REPLY by plaintiff in support of its cross-motion for summary judgment of infringement of '021 patent claims 1 and 19. (ka) [Entry date 05/05/00] [Edit date 05/05/00]
- 05/16/2000 41 NOTICE by defendants of filing exhibits (eav) [Entry date 05/17/00]
- 07/19/2000 42 MOTION by plaintiff Vardon Golf Co Inc to compel discovery and to set discovery close and trial dates (Attachments); Notice of motion (eav) [Entry date 07/31/00]

- 07/26/2000 43 MOTION by defendants/counteclaim-plaintiffs Rossignol Ski Co Inc, Cleveland Golf Inc to stay further discovery until disposition of Cleveland Golf/Rossignol's pending motions for summary judgment (Attachments); Notice of motion (eav) [Entry date 07/31/00]
- 07/26/2000 44 OPPOSITION by defendants/counterlaim-plaintiffs Rossignol Ski Co Inc, Cleveland Golf Inc to compel discovery and [42-1] to set discovery close and trial dates [42-2] (Attachments); Notice of filing (eav) [Entry date 07/31/00]
- 07/28/2000 45 MINUTE ORDER of 7/28/00 by Hon. Charles R. Norgle Sr : Briefing Schedule set on 1. Cleveland golf/Rossignol's motion to stay further discovery until disposition of cleveland of Golf/Rossignol's pending motions for summary judgment and 2. Vardon golf's motion to compel discovery and to set discovery close and trial dates as follows: Response to motions due on or before 8/4/00. Reply to response due on or before 8/11/000. [25-1] [17-1] [14-1] Mailed notice (eav) [Entry date 07/31/00]
- 07/31/2000 46 CONSOLIDATED RESPONSE by plaintiff Vardon Golf Co Inc to the defendants' motion to stay further discovery and [43-1] reply in support of Vardon's motion to compel discovery and [42-1] to set discovery close and trial dates [42-2] (Attachments) (eav) [Entry date 08/01/00]
- 08/11/2000 47 REPLY by Cleveland Golf Inc/Rossignol Ski Co Inc to Vardon's response to motion to stay discovery until disposition of Cleveland Golf/Rossignol's motions for summary judgment [43-1]; Notice of filing (eav) [Entry date 08/14/00]
- 08/11/2000 48 AFFIDAVIT of Rick Orf; Notice of filing (eav) [Entry date 08/14/00]
- 09/26/2000 49 MINUTE ORDER of 9/26/00 by Hon. Charles R. Norgle Sr : Before the court are defendant's motions for summary judgment [14-1] & [17-1], and plaintiff's cross motions for summary judgment [25-1] & [27-1]. For the reasons stated on the attached order, the court denies the motions. See attached order. (Entered Order) Mailed notice (eav) [Entry date 09/27/00]
- 09/28/2000 50 MINUTE ORDER of 9/28/00 by Hon. Charles R. Norgle Sr : This case is set for a status hearing on 10/25/00 at 9:30 a.m. Counsel for all parties shall appear. Mailed notice (eav) [Entry date 10/02/00]
- 10/03/2000 51 MINUTE ORDER of 10/3/00 by Hon. Charles R. Norgle Sr : Motion by defendant Cleveland doc. [34-1] to file overlength brief was and is granted. Mailed notice (eav) [Entry date 10/04/00]
- 10/10/2000 52 REQUEST by plaintiff for reconsideration (eav) [Entry date 10/11/00]
- 10/25/2000 = SCHEDULE set on 10/25/00 by Hon. Charles R. Norgle Sr : Status hearing held and continued to 9:30 11/13/00 . No notices required, advised in open court. (ef) [Entry date 10/25/00]
- 10/27/2000 = SCHEDULE set on 10/27/00 by Hon. Charles R. Norgle Sr : Status hearing reset to 9:30 11/15/00 . Telephone notice (ef) [Entry date 10/27/00]
- 11/15/2000 53 MOTION by plaintiff Vardon Golf Co Inc, third-party defendant Dillis V Allen to substitute the '941 reissue patent into the case (Attachments) (eav) [Entry date 11/16/00]
- 11/15/2000 54 MINUTE ORDER of 11/15/00 by Hon. Charles R. Norgle Sr : Status hearing held. Response to motion to reconsider is due on or before 11/29/2000. Reply to response is due on or before 12/6/2000. Settlement conference set for 12/12/00 at 11:30 a.m. Mailed notice (eav) [Entry date 11/16/00]
- 11/29/2000 55 MEMORANDUM by defendants Rossignol Ski Co Inc/ Cleveland Golf Inc in opposition to Vardon's request for reconsideration of Vardon's motion for partial summary judgment of infringement of '021 patent claims 1 and 19; Notice of filing (eav) [Entry date 11/30/00]
- 12/05/2000 56 REPLY by plaintiff in support of its motion that the Cleveland Vas+Irons infringe claims 1 and 19 of Vardon's '021 patent (Attachment) (eav) [Entry date 12/06/00]

- 12/11/2000 57 TRANSCRIPT of proceedings for the following date(s): 12/7/99 Before Honorable George M. Marovich (eav) [Entry date 12/11/00].
- 12/19/2000 58 MINUTE ORDER of 12/19/00 by Hon. Charles R. Norgle Sr : Settlement conference date reset to 1/17/2001 at 11:30 a.m. If United States of America v. Dean Bauer proceeds to trial on 1/16/2001, the settlement conference will be re-scheduled.) Mailed notice (eav) [Entry date 12/20/00]
- 01/29/2001 59 MINUTE ORDER of 1/29/01 by Hon. Charles R. Norgle Sr : (Entered Agreed Order of Dismissal dated 24 January 2001.) terminating case Mailed notice (eav) [Entry date 01/29/01]
- 01/29/2001 = MAILED Patent report and certified copy of Judge Norgle's order dated 1/29/01 to Washington, D.C. (eav) [Entry date 01/29/01]

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US District Court Civil Docket

US District Court for the Northern District of Illinois
(Chicago)

1:01cv5909

Vardon Golf Co Inc v. Biam Gen Titanium, et al

This case was retrieved from the court on Thursday, April 29, 2004

Date Filed: 08/01/2001
Assigned To: Honorable William T Hart
Referred To:
Nature of suit: Patent (830)
Cause: Patent Infringement
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: TERMED
DENLOW A0279
Closed: Yes
Statute: [28:1338](#)
Jury
Demand: Plaintiff
Demand
Amount: \$0

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[Term: 04/24/2002]

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Geng Yui Int'l Co, Ltd
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[Term: 12/05/2001]

HD Golf, LLC
DEFENDANT
[Term: 12/05/2001]

Hireko Trading Co Inc
DEFENDANT
[Term: 07/01/2002]

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Kent Sport, Inc
DEFENDANT
[Term: 01/28/2002]

Make & Supply Sports, Inc
DEFENDANT
[Term: 01/09/2002]

Ralph Maltby's Golfworks
DEFENDANT
[Term: 09/19/2001]

Monark Golf Supply, Inc
DEFENDANT
[Term: 12/12/2001]

Pintracker Golf, Inc
DEFENDANT
[Term: 01/09/2002]

Turin Golf, Inc
DEFENDANT
[Term: 06/26/2002]

Win Win Sports, Inc
DEFENDANT
[Term: 02/13/2002]

Dunlop Maxfli Sports Corporation
COUNTER-CLAIMANT
[Term: 04/24/2002]

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[term 04/24/02]
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v.

Vardon Golf Company Inc
COUNTER-DEFENDANT

Keith A Vogt
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v.







Vardon Golf Company Inc
COUNTER-DEFENDANT








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Michael P Mazza

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Date	#	Proceeding Text
08/01/2001	 <u>1</u>	COMPLAINT; jury demand - Civil cover sheet - Appearance(s) of Michael P. Mazza, Keith A. Vogt as attorney(s) for plaintiff (Fifteen originals and fifteen copies summons(es) issued.) (Documents: 1-1 through 1-3) [Date Entered: 08/02/01, By: hp]
08/01/2001	=	RECEIPT regarding payment of filing fee paid; on 8/1/01 in the amount of \$150.00, receipt #1048536. [Date Entered: 08/02/01, By: hp]
09/04/2001	<u>2</u>	ANSWER by defendant Butler Golf to complaint [1-1]. [Date Entered: 09/05/01, By: cm]
09/13/2001	<u>3</u>	APPLICATION for leave to appear pro hac vice by Leonard Tachner for defendant Butler Golf; Order entered granting leave by Hon. William T. Hart. [Date Entered: 09/14/01, By: cm]
09/19/2001	 <u>4</u>	MINUTE ORDER of 9/19/01 by Hon. William T. Hart : Defendant Ralph Maltby's Golfworks (Golfworks) is dismissed with prejudice as a party defendant having settled with plaintiff. (Entered order dismissing with prejudice complaint against defendant Goldworks). Terminating party Ralph Maltby's Golfworks. Mailed notices by judge's staff [Date Entered: 09/24/01, By: cm]
10/01/2001	<u>5</u>	DESIGNATION of local counsel by Leonard Tachner attorney for defendant Butler Golf; Notice. [Date Entered: 10/02/01, By: cm]
10/22/2001	 <u>6</u>	ANSWER by defendant Dunlop Maxfli Sports Corporation defenses to complaint [1-1] and COUNTERCLAIMS against plaintiff. [Date Entered: 10/23/01, By: cm]
10/22/2001	<u>7</u>	ATTORNEY APPEARANCE for defendant/counter-claimant Dunlop Maxfli Sports Corporation by Eugene A. Schoon, Peter J. Tarsney, Thomas David Rein. [Date Entered: 10/24/01, By: cm]
10/24/2001	 <u>8</u>	RESPONSE TO COUNTERCLAIM [6-2] by counter-defendant. [Date Entered: 10/25/01, By: cm]
11/07/2001	<u>9</u>	ATTORNEY APPEARANCE for defendant Hireko Trading Co., Inc. by Edward A. Cohen, Gerald E. Ziebell. [Date Entered: 11/08/01, By: cm]
11/07/2001	 <u>10</u>	ANSWER to complaint, defenses [1-1] and COUNTERCLAIMS by defendant Hireko Trading Co., Inc. against plaintiff. [Date Entered: 11/08/01, By: cm]
11/16/2001	=	SCHEDULE set on 11/16/01 by Hon. William T. Hart : Status hearing set to 11:00 11/28/01 . Mailed notice [Date Entered: 11/16/01, By: cw]
11/21/2001	 <u>11</u>	RESPONSE TO defendant Hireko's COUNTERCLAIMS [10-2] by counter-defendant [Date Entered: 11/26/01, By: ip]
11/28/2001	=	SCHEDULE set on 11/28/01 by Hon. William T. Hart : Status hearing held and continued to 11:00 12/12/01 for presentation of a discovery plan . Mailed notice [Date Entered: 11/28/01, By: cw]
11/28/2001	<u>12</u>	APPLICATION for leave to appear pro hac vice by William D. Herlong for defendant/counter-claimant Dunlop Maxfli Sports Corporation; Order entered granting leave by Hon. William T. Hart. [Date Entered: 11/29/01, By: cm]
11/28/2001	<u>13</u>	APPLICATION for leave to appear pro hac vice by Neil C. Jones for defendant/counter-claimant Dunlop Maxfli Sports Corporation; Order entered granting leave by Hon. William T. Hart. [Date Entered: 11/29/01, By: cm]

- 11/28/2001  15 RULE 55 MOTION by plaintiff for entry of default judgment against certain defendants Biam General Titanium, Integra Sports, Make & Supply Sports, Monark Golf Inc, Turin Golf Inc, Win Win Sports Inc (Attachments); Notice. [Date Entered: 12/07/01, By: cm]
- 11/30/2001 = SUMMONS, original and one copy, issued as to Monark Golf Supply, Inc. [Date Entered: 12/03/01, By: cm]
- 12/05/2001 14 RULE 41 DISMISSAL by plaintiff as to party Geng Yui International Co. Ltd, party HD Golf LLC and party Carsten Sports, Ltd. [Date Entered: 12/06/01, By: cm]
- 12/05/2001  16 MINUTE ORDER of 12/5/01 by Hon. William T. Hart : Plaintiff's Rule 55 motion for entry of default judgment against certain defendants [15-1] is granted in part, denied in part and withdrawn as to defendant Monark GolfSupply, Inc. Defendants Biam/General Titanium, Inc., Integra Sports, Make & Supply Sports, Inc., Turin Golf, Inc. and Win Win Sports, Inc. are hld in default. Prove up is set for 12/20/01 at 11:00 am. Mailed notice [Date Entered: 12/07/01, By: cm]
- 12/11/2001 17 PROPOSED scheduling order by defendant Dunlop Maxfli Sports Corporation; with discovery plan. [Date Entered: 12/12/01, By: cm]
- 12/11/2001 17 DISCOVERY plan by defendant Dunlop Maxfli Sports Corporation; with proposed scheduling order. [Date Entered: 12/12/01, By: cm]
- 12/12/2001 18 APPLICATION for leave to appear pro hac vice by Allan Gabriel for defendant/counter-claimant Hireko Trading Co; Order entered granting leave by Hon. William T. Hart. [Date Entered: 12/13/01, By: cm]
- 12/12/2001 19 APPLICATION for leave to appear pro hac vice by John P. Godsil for defendant/counter-claimant Hireko Trading Co; Order entered granting leave by Hon. William T. Hart. [Date Entered: 12/13/01, By: cm]
- 12/12/2001  20 MINUTE ORDER of 12/12/01 by Hon. William T. Hart : Status hearing held and continued to 2/13/02 at 11:00 am. Defendants Geng Yui Int'l. Co. Ltd., HD Golf, LLC and Carsten Sports Ltd. are dismissed without prejudice pursuant to FRCP 41(a)(1). Defendant Monark Golf Supply, Inc. is dismissed as a party defendant having settled with plaintiff. (Entered order dismissing complaint against defendant Monark Golf Supply, Inc.) Terminating party Monark Golf Sup Inc. Mailed notices by judge's staff [Date Entered: 12/17/01, By: cm]
- 12/20/2001  21 MINUTE ORDER of 12/20/01 by Hon. William T. Hart : Prove-up held. Defendants Biam/General Titanium, Inc., Integra Sports, Make & Supply Sports, Inc., Turin Golf, Inc., and Win Win Sports, Inc. are in default and are permanently enjoined from infringing on plaintiff's U.S. Letters Patent No. RE. 36,950. Plaintiff may engage in discovery to establish damages, if any, for which said defendants are liable. Court retains jurisdiction to enter a judgment for damages as to said defendants. (Entered order against certain defendants). Mailed notices by judge's staff [Date Entered: 12/26/01, By: cm]
- 12/21/2001 = SCHEDULE set on 12/21/01 by Hon. William T. Hart : Written discovery is to be completed by 2/28/02; fact discovery is to be completed by 4/30/02. All Discovery including expert discovery is ordered closed on 6/28/02. Mailed notice [Date Entered: 12/21/01, By: cw]
- 01/09/2002  22 MINUTE ORDER of 1/9/02 by Hon. William T. Hart : Defendant Pintracker Golf, Inc. is dismissed with prejudice as a party defendant having settled with plaintiff. (Entered order dismissing with prejudice complaint against defendant Pintracker Golf, Inc.) Terminating party Pintracker Golf Inc. Mailed notice [Date Entered: 01/11/02, By: cm]
- 01/09/2002  23 MINUTE ORDER of 1/9/02 by Hon. William T. Hart : Defendant Make & Supply Sports, Inc. has settled with plaintiff; therefore, the orders of default and default judgment entered against said defendant are vacated. Defendant Make & Supply Sports, Inc. is dismissed with prejudice as a party defendant. (Entered order dismissing complaint against defendant Make & Supply

- Sports, Inc.) Terminating party Make & Sup Sports. Mailed notice [Date Entered: 01/11/02, By: cm]
- 01/28/2002 24 APPLICATION for leave to appear pro hac vice by Mark A. Watkins for defendant Butler Golf; Order entered granting leave by Hon. William T. Hart. [Date Entered: 01/29/02, By: cm]
- 01/28/2002 25 APPLICATION for leave to appear pro hac vice by Michael J. Garvin for defendant Butler Golf; Order entered granting leave by Hon. William T. Hart. [Date Entered: 01/29/02, By: cm]
- 01/28/2002 26 APPLICATION for leave to appear pro hac vice by Eryn R. Ace for defendant Butler Golf ; Order entered granting leave by Hon. William T. Hart. [Date Entered: 01/29/02, By: cm]
- 01/28/2002  27 MINUTE ORDER of 1/28/02 by Hon. William T. Hart : Defendant Kent Sport, Inc. is dismissed with prejudice as a party defendant having settled with plaintiff terminating party Kent Sport, Inc. (Entered Order Dismissing Complaint Against Defendant Kent Sport, Inc.) Mailed notice [Date Entered: 01/30/02, By: mw]
- 01/28/2002  29 FIRST MOTION by plaintiff to compel discovery from defendant Dunlop Maxfli Sports Corporation (Attachments); Notice [Date Entered: 01/31/02, By: ar]
- 01/29/2002 = MAILED Patent report to Commissioner of Patents & Trademarks, Washington, D.C. [Date Entered: 01/29/02, By: hp]
- 01/29/2002 28 APPLICATION for leave to appear pro hac vice by Michael J. Garvin for defendant Butler Golf ; Order entered granting leave by Hon. William T. Hart. [Date Entered: 01/30/02, By: mw]
- 01/30/2002  30 MINUTE ORDER of 1/30/02 by Hon. William T. Hart : Plaintiff's first motion to compel discovery from defendant Dunlop Maxfli Sports Corporation [29-1] is taken under advisement. No notice [Date Entered: 01/31/02, By: ar]
- 01/31/2002  31 MINUTE ORDER of 1/31/02 by Hon. William T. Hart: The cases cited by defendant do not address the issue of discovery. The discovery requested by defendant is appropriate. Cf. Twentieth Century Fox Film Corp. v. Mow Trading Corp., 749 F.Supp.473,475(S.D.N.Y.1990) (in a copyright infringement case, discovery that might lead to evidence of additional infringing merchandise was appropriate). Plaintiff's first motion to compel discovery from defendant Dunlop Maxfli Sports Corporation is granted [29-1]. Within 21 days, defendant shall answer the interrogatories and provide the samples. Mailed notice [Date Entered: 02/01/02, By: vj]
- 02/12/2002  32 MOTION by defendant Dunlop Maxfli Sports Corporation for entry of protective order (Attachment). [Date Entered: 02/13/02, By: cm]
- 02/13/2002 = SCHEDULE set on 2/13/02 by Hon. William T. Hart : Status hearing held. No notice [Date Entered: 02/13/02, By: cw]
- 02/13/2002  33 MINUTE ORDER of 2/13/02 by Hon. William T. Hart : Defendant Win Win Sports, Inc. has settled with plaintiff; therefore, the orders of default and default judgment entered against said defendant are vacated. Defendant Win Win Sports, Inc. is dismissed with prejudice as a party defendant. (Entered order dismissing with prejudice complaint against defendant Win Win Sports, Inc.) Mailed notice [Date Entered: 02/19/02, By: cm]
- 02/27/2002 34 TRANSCRIPT of proceedings for the following date(s): Held on 1/30/02 before Honorable William T. Hart. [Date Entered: 02/27/02, By: cm]
- 03/08/2002 35 TRANSCRIPT of proceedings for the following date(s): Held on 02/13/02 before Honorable William T. Hart. [Date Entered: 03/11/02, By: cm]
- 03/20/2002  36 MINUTE ORDER of 3/20/02 by Hon. William T. Hart : Defendant Intrega Sports which ceased doing business and dissolved prior to service of the complaint and non-party Trophy Sports LLC which purchased the mark Intrega has settled with plaintiff; therefore, the orders of default and default judgment entered against defendant Intrega Sports are vacated. Defendant


- Intrega Sports is dismissed with prejudice as a party defendant, terminating party Integra Sports. (Entered order dismissing complaint against defendant Integra Sports). Mailed notice [Date Entered: 03/25/02, By: cm]
- 04/22/2002  37 MOTION by plaintiff to compel discovery from defendants Biam and Turn Golf (Attachments). [Date Entered: 04/23/02, By: cm]
- 04/23/2002 39 NOTICE by plaintiff of motion regarding motion to compel discovery from defendants Biam and Turn Golf [37-1]. [Date Entered: 05/02/02, By: cm]
- 04/24/2002  38 MINUTE ORDER of 4/24/02 by Hon. William T. Hart : Plaintiff and defendant Dunlop Slazenger Groups Americas, Inc., formerly Dunlop Maxfli Sports Corporation, sued as Dunlop Maxfli Sports Corporation, have settled. Accordingly, plaintiff's claims against said defendant and said defendant's counterclaims are dismissed with prejudice with each party to bear its own costs. Said defendant's motion for entry of protective order [32-1] is moot. (Entered dismissal order between Vardon Golf Company, Inc. and Dunlop Slazenger Groups Americas, Inc.) Terminating party DunlopMaxfli Sports. Mailed notice [Date Entered: 04/29/02, By: cm]
- 05/01/2002  40 MINUTE ORDER of 5/1/02 by Hon. William T. Hart : Plaintiff's motion to compel discovery from defendants Biam/General Titanium, Inc. and Turn Golf, Inc. [37-1] is denied without prejudice, to subpoena said defendants. Nonnotice [Date Entered: 05/02/02, By: cm]
- 06/26/2002  41 MINUTE ORDER of 6/26/02 by Hon. William T. Hart : Defendant Turin Golf, Inc. has settled with plaintiff; therefore, the orders of default and default judgment entered against said defendant are vacated. Defendant Turin Golf, Inc. is dismissed with prejudice as a party defendant. Terminating party Turin Golf, Inc. (Entered order dismissing complaint against defendant Turin Golf, Inc.) Mailed notice [Date Entered: 06/28/02, By: cm]
- 07/01/2002  42 MINUTE ORDER of 7/1/02 by Hon. William T. Hart : Plaintiff's complaint as to defendant Hierko Trading Co., Inc. is dismissed with prejudice and defendant/counterclaim Hireko Trading Co., Inc.'s counterclaim is dismissed with prejudice, with each party to bear its own attorneys' fees, costs and expenses. (Entered stipulation for dismissal of complaint and counterclaim with prejudice (F.R.C.P., Rule 41(a)(1)(ii)). Terminating party Hireko Trading Co. Mailed notice [Date Entered: 07/03/02, By: cm]
- 07/08/2002 = SCHEDULE set on 7/8/02 by Hon. William T. Hart : Status hearing set to 11:00 7/17/02 . Mailed notice [Date Entered: 07/08/02, By: cw]
- 07/17/2002 = SCHEDULE set on 7/17/02 by Hon. William T. Hart : Status hearing held and continued to 11:00 7/31/02 . Mailed notice [Date Entered: 07/17/02, By: cw]
- 07/31/2002 = SCHEDULE set on 7/31/02 by Hon. William T. Hart : Status hearing held and continued to 11:00 9/11/02 . Mailed notice [Date Entered: 07/31/02, By: cw]
- 09/11/2002  43 MINUTE ORDER of 9/11/02 by Hon. William T. Hart: Status hearing stricken. Plaintiff and remaining defendants have settled. This case as to remaining defendants is dismissed with prejudice and each side to bear its own costs.terminating case Mailed notice [Date Entered: 09/13/02, By: cv]
- 09/13/2002 = MAILED patent report with certified copy of minute order dated 9/11/02 to the Commissioner of Patents and Trademarks, Washington DC. [Date Entered: 09/13/02, By: cv]
- 04/20/2004 44 TRANSCRIPT of proceedings for the following date(s):Held on 11/28/01, 12/5/01 & 12/12/01 before Honorable William T. Hart. (44-1 through 44-3) [Date Entered: 04/21/04, By: cm]

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882561 (07) 5301941 April 12, 1994

Time of Request: April 29, 2004 09:17 AM EDT

Research Information:

Utility, Design and Plant Patents
patno=5301941

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

5301941

April 12, 1994

Golf club head with increased radius of gyration and face reinforcement

REEXAM-LITIGATE:

NOTICE OF LITIGATION

NOTICE OF LITIGATION Vardon Golf Company, Inc. v. Golfsmith International, Inc., et al., Filed May 13, 1998, D.C. N.D. Illinois, Doc. No. 98 C 2944

NOTICE OF LITIGATION

Vardon Golf Company, Inc. v. Karsten Manufacturing Corporation, Filed April 27, 1999, D.C. N.D. Illinois, Doc. No. 99-CV-2785

Jury verdict in favor of the defendant and against the plaintiff.

NOTICE OF LITIGATION

NOTICE OF LITIGATION Vardon Golf Company, Inc. v. Rossignol Ski Company, Inc., et al., Filed Apr. 27, 1999, D.C. N.D. Illinois, Doc. No. 99 C 2784 Judge Norgle's Order of Dismissal with Prejudice dated 1/29/01

NOTICE OF LITIGATION

Vardon Golf Company, Inc. v. Biam/General Titaniu, Inc., et al, Filed August 1, 2001, D.C. N.D. Illinois, Doc. No. 01 C 5909

Status hearing is stricken. Plaintiff and remaining defendants have settled. This case as to remaining defendants is dismissed with prejudice and each side to bear its own costs

REISSUE: Reissue Application filed Aug. 20, 1999 (O.G. Mar. 19, 2002) Ex. Gp.: 3742; Re. S.N. 09/378,131 This Patent was reissued on Nov. 7, 2000 as Reissue Patent Re 36,950. Reissue Application filed Jun. 23, 1997 (O.G. Nov. 11, 1997) Ex. Gp.: 3304; Re. S.N. 08/880,748 Reissue Application filed Jan. 9, 1995 (O.G. Mar. 14, 1995) Ex. Gp.: 3304; Re. S. N. 08/369,910, (O.G. March 19, 2002)

APPL-NO: 882561 (07)

FILED-DATE: May 13, 1992

GRANTED-DATE: April 12, 1994

882561 (07) 5301941 April 12, 1994

ASSIGNEE-AT-ISSUE: Vardon Golf Company, Inc., Elk Grove Village, Illinois, United States (US), 02

ASSIGNEE-AFTER-ISSUE: August 10, 1992 - ASSIGNMENT OF ASSIGNORS INTEREST., VARDON GOLF COMPANY, INC., Reel and Frame Number: 006176/0344

Lexis.com History

04/29/2004

[Return to History](#)

Sorted by Date

Activities	# Docs	Source	Client ID	Date
5301941 or 5,301,941	0	ASAPII Publications - Patents		04/29/2004 09:28:43
5301941 or 5,301,941	4	News, All (English, Full Text)		04/29/2004 09:24:10
5301941 or 5,301,941	0	Patent, Trademark & Copyright Periodicals, Combined		04/29/2004 09:23:54
5301941 or 5,301,941	4	Patent Cases from Federal Courts and Administrative Materials		04/29/2004 09:19:59
patno=5301941	1	Utility, Design and Plant Patents		04/29/2004 09:17:22

(C) QUESTEL 1994
QUESTEL.ORBIT (TM) 1998

Selected file: PLUSPAT

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Comprehensive Worldwide Patents database

**** SS 1: Results 1**

1 / 1 PLUSPAT - @QUESTEL-ORBIT - image

Patent Number :

US5301941 A 19940412 [US5301941]

Title :

(A) Golf club head with increased radius of gyration and face reinforcement

Patent Assignee :

(A) VARDON GOLF COMPANY INC (US)

Patent Assignee :

Vardon Golf Company, Inc., Elk Grove Village IL [US]

Inventor(s) :

(A) ALLEN DILLIS V (US)

Application Nbr :

US88256192 19920513 [1992US-0882561]

Priority Details :

US88256192 19920513 [1992US-0882561]

Intl Patent Class :

(A) A63B-053/04 B22D-019/00

EPO ECLA Class :

A63B-053/04

EPO ICO Class :

K63B-053/04A6B

US Patent Class :

ORIGINAL (O) : 473327000; CROSS-REFERENCE (X) : 164034000 164098000
164361000 473329000 473342000 473350000

Document Type :

Basic

Citations :

USD229431; US-572436; US-922444; US1459810; US1568888; US1587758;
US1678637; US2083189; US2429351; US3077350; US3652093; US3847399;
US3873094; US4076254; US4679792; US4681322; US4730830; US4930781;
US5060951; AU211781; JP0049130; GB15597

Publication Stage :

(A) United States patent

Abstract :

An improved high impact metal clubhead with a unique reinforced composite face wall, increased radius of gyration, and a positive lift air foil surface contour. The composite face wall includes an impact supporting wall rigidified by a pattern of integrally cast reinforcing bars that extend forwardly, rather than rearwardly, from the supporting wall. The reinforced supporting wall is covered by a very hard plastic ball striking insert that is cast in situ over the supporting wall. The increase in radius of gyration is accomplished by extending the heel and toe portions of the clubhead along the face wall further from the geometric center of the head, beyond present day parameters for high impact clubheads. And the positive lift is effected by contouring the top wall of the clubhead downwardly and rearwardly from the base wall more severely almost to the plane of the sole plate, and flattening the rear wall so it is almost co-planar with the sole plate. This configuration results in the top wall being equal to or greater in length than the combined length of the sole plate and rear wall in a vertical plane extending through the clubhead along the target line. The laws of continuity of matter and the air foil shape of the top wall

eliminate the negative lift or drag in today's "woods" and offer the possibility of some positive lift to increase ball overspin.

1 / 1 LGST - ©EPO

Patent Number :

US5301941 A 19940412 [US5301941]

Application Number :

US88256192 19920513 [1992US-0882561]

Action Taken :

19920810 US/AS02-A

ASSIGNMENT OF ASSIGNOR'S INTEREST

OWNER: VARDON GOLF COMPANY, INC.; EFFECTIVE DATE: 19920508

19920810 US/AS02-A

ASSIGNMENT OF ASSIGNOR'S INTEREST

OWNER: ALLEN, DILLIS V.; EFFECTIVE DATE: 19920508

19950314 US/RF-A

REISSUE APPLICATION FILED

EFFECTIVE DATE: 19950109

19971111 US/RF-A

REISSUE APPLICATION FILED

EFFECTIVE DATE: 19970623

20020319 US/RF-A

REISSUE APPLICATION FILED

EFFECTIVE DATE: 19990820

20020611 US/FP-A [-]

EXPIRED DUE TO FAILURE TO PAY MAINTENANCE FEE

EFFECTIVE DATE: 20020412

Update Code :

2003-22

1 / 1 CRXX - ©CLAIMS/RRX

Patent Number :

5,301,941 A 19940412 [US5301941]

Patent Assignee :

Vardon Golf Co Inc

Actions :

19950109 REISSUE REQUESTED

ISSUE DATE OF O.G.: 19950314

REISSUE REQUEST NUMBER: 08/369910

EXAMINATION GROUP RESPONSIBLE FOR REISSUEPROCESS: 3304

Reissue Patent Number:

19970623 REISSUE REQUESTED

ISSUE DATE OF O.G.: 19971111

REISSUE REQUEST NUMBER: 08/880748

EXAMINATION GROUP RESPONSIBLE FOR REISSUEPROCESS: 3304

Reissue Patent Number: USRE36950

19990820 REISSUE REQUESTED
ISSUE DATE OF O.G.: 20020319
REISSUE REQUEST NUMBER: 09/378131
EXAMINATION GROUP RESPONSIBLE FOR REISSUEPROCESS: 3742

Reissue Patent Number:

20020611 EXPIRED (20020412)

1 / 7 LITA - ©Thomson Derwent

Accession Number :

P2002-43-11

File Segment :

PATENT (P)

Patent Number :

US5301941 19940412 (Utility)

Plaintiffs :

Vardon Golf Company Incorporated

Defendants :

Biam/General Titaniu Incorporated, et al

Court :

IL, Northern Dist.

Docket Number :

01 C 5909

Filing Date :

2001-08-01

Action Date :

2002-09-13

Action :

Order entered.

2 / 7 LITA - ©Thomson Derwent

Accession Number :

P2002-43-10

Cross Reference :

P1999-21-70

File Segment :

PATENT (P)

Patent Number :

US5301941 19940412 (Utility)

Plaintiffs :

Vardon Golf Company Incorporated

Defendants :

Karsten Manufacturing Corporation

Court :

IL, Northern dist.

Docket Number :

99-CV-2785

Filing Date :

1999-04-27

Action Date :

2002-08-07

Action :

Jury verdict in favor of the defendant & against the plaintiff. Judgment is hereby entered in favor of the defendant & against plaintiff. This

case is closed.
Other Patents Nbrs :
US5401021

3 / 7 LITA - ©Thomson Derwent
Accession Number :
P2001-07-36
Cross Reference :
P1999-21-69
File Segment :
PATENT (P)
Patent Number :
US5301941 19940412 (Utility)
Plaintiffs :
Vardon Golf Company Incorporated
Defendants :
Rossignol Ski Company Incorporated;
et al
Court :
IL, Northern Dist.
Docket Number :
99C2784
Filing Date :
1999-04-27
Action Date :
2001-01-29
Action :
Order by Judge Norgle entered.
Other Patents Nbrs :
US5401021

4 / 7 LITA - ©Thomson Derwent
Accession Number :
P2000-04-22
Cross Reference :
P1998-22-37
File Segment :
PATENT (P)
Patent Number :
US5301941 19940412 (Utility)
Plaintiffs :
Vardon Golf Company Incorporated
Defendants :
Golfsmith International Incorporated, et al
Court :
IL, Northern Dist.
Docket Number :
98 C 2944
Filing Date :
1998-05-13
Action Date :
1999-12-22
Action :
Attached certified copy of Judge Coar's.
Other Patents Nbrs :
US5401021
USD344997

5 / 7 LITA - ©Thomson Derwent
Accession Number :

P1999-21-70
File Segment :
PATENT (P)
Patent Number :
US5301941 19940412 (Utility)
Plaintiffs :
Vardon Golf Company Incorporated
Defendants :
Karsten Manufacturing Corporation
Court :
IL, Northern dist.
Docket Number :
99-CV-2785
Filing Date :
1999-04-27
Action :
A complaint was filed.
Other Patents Nbrs :
US5401021

6 / 7 LITA - ©Thomson Derwent
Accession Number :
P1999-21-69
File Segment :
PATENT (P)
Patent Number :
US5301941 19940412 (Utility)
Plaintiffs :
Vardon Golf Company Incorporated
Defendants :
Rossignol Ski Company Incorporated;
et al.
Court :
IL, Northern dist.
Docket Number :
99C2784
Filing Date :
1999-04-27
Action :
A complaint was filed.
Other Patents Nbrs :
US5401021

7 / 7 LITA - ©Thomson Derwent
Accession Number :
P1998-22-37
File Segment :
PATENT (P)
Patent Number :
US5301941 19940412 (Utility)
Plaintiffs :
Vardon Golf Company Incorporated
Defendants :
Golfsmith International Incorporated, et al
Court :
IL, Northern Dist.
Docket Number :
98 C 2944
Filing Date :
1998-05-13
Action :

A complaint was filed.
Other Patents Nbrs :
US5401021
USD344997

Session finished: 29 APR 2004 Time 15:31:18
QUESTEL.ORBIT thanks you. Hope to hear from you again soon.